



THREE SPEECHES OF

The Right Honorable, *Sir Francis*
Bacon Knight, then his Majesties Sollicitor
Generall, after LORD VERULAM,
Viscount Saint Alban.

Concerning the } POST-NATI
 } *Naturalization of the Scotch in*
 } *England*
 } *Union of the Lawes of the Kingdomes*
 } *of England and Scotland.*

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At a Committee appointed by the Honourable House of Commons in Parliament for examination of books, & of the licensing and suppressing of them, It is ordered that these three speeches or treatises be published in print.

Edward Dering.





The *Argument* of *S^r Francis Bacon*
Knight, His Majesties Sollicitor generall, in
 the Case of the P O S T - N A T I of Scotland,
 in the *Exchequer Chamber*, before the
Lord Chancellor and all the
 Judges of England.

May it please Your Lord-ships,

THis Case Your Lord-ships doe well perceive to be of exceeding great consequence. For whether you doe measure that by place, that reacheth not onely to the Realme of England, but to the whole Iland of Great-Brytaine; or whether you measure that by time, that extendeth not onely to the present time, but much more to future generations,

Et nati natorum, et qui nascentur ab illis:

And therefore as that isto receive at the barre a full and free debate: so I doubt not but that shall receive from your Lord-ships a sound and iust resolution according to law and according to truth. For my Lords, though he were thought to have said well that said that for his word, *Rex fortissimus*; Yet he was hought to have said better, even in the opinion of a King himselfe that said, *Veritas fortissima et praevalet*; And I doe much rejoyce to observe such a Concurrence in the whole carriage of this cause, to this

end that truth may prevaile. The case no fained, or framed case, but a true case betweene true parties.

The title handled formerly in some of the Kings Courts, and Free-hold upon it : used indeed by his Majesty, in his high wisdom to give an end to this great question, but not raysted : *ocasio*, as the Schoole-men say, *arrepta non porrecta*.

The case argued in the Kings Bench by M. Walter with great liberty, and yet with good approbation of the Court. The persons assigned to be of Counsell on that side, inferiour to none of their quality and degree in learning; and some of them most conversant and exercised in the question.

The Iudges in the Kings Bench have adjourned it to this place, for conference with the rest of their brethren. Your Lordship, my Lord Chancellor, though you be absolute Iudg in the Court where you sit, and might have called to you such assistance of Iudges as to you had seemed good: yet would not fore-run or leade in this case by any opinion there to be given; but have chosen rather to come your selfe to this assembly, all tending (as I sayd) to this end, whereunto I for my part doe heartily subscribe, *ut vincat veritas*, that truth may first appeare, and then prevaile. And I doe firmly hold and doubt not but I shall well maintaine, that this is the truth, That *Calvin* the plaintiefe is *Ipso Iure* by the law of England a naturall borne subject, to purchase Free-hold and to bring real actions within *England*. In this case I must so consider the time, as I must much more consider the matter. And therefore though it may draw my speech in to further length; yet I dare not handle a case of this nature

nature confusedly, but purpose to observe the ancient and exact forme of pleadings, which is,

First, to explaine or induce.

Then, to confute, or answere objections.

And lastly, to prove, or confirme.

And first for explanation. The outward question in this case is no more, but whether a child borne in *Scotland* since his Majesties happy comming to the Crowne of *England*, be naturalized in *England* or no? But the inward question or State of the question evermore beginneth, where that which is confessed on both sides doth leave.

It is confest, that if these two Realmes of *England* and *Scotland* were united under one Law and one Parliament, and thereby incorporated and made as one Kingdome, that the *Post-natus* of such an union should be naturalized.

It is confessed, that both Realmes are united in the person of our Sovereigne; or (because I will gaine nothing by surreption, in the putting of the question) that one & the same naturall person, is King of both Realmes.

It is confessed, that the Lawes and Parliaments are severall. So then, whether this priviledge and benefit of Naturalization be an accessory or dependancy upon that which is one and joint, or upon that which is severall, hath beene and must be the depth of this question. And therefore your Lord-ships doe see the State of this question doth evidently lead me by way of inducement to speake of three things. The King, the Law, and the priviledge of Naturalization. For

if you well understand the nature of the two Principals, and againe the nature of the Accessory; Then shall you discerne, to whether Principal the Accessory doth properly referre, as a shadow to a body, or Iron to an Adamant.

And there your Lord-ships will give me leave in a case of this quality, first to visit and open the foundations and fountaines of Reason; and not to begin with the positions, and eruditions of a *Municipall Law*; for so was that done in the great Case of Mines; and so ought that to be done in all cases of like nature. And this doth not at all detract from the sufficiency of our lawes, as incompetent to decide their owne cases; but rather addeth a dignity unto them when their reason appearing as well as their authority, doth shew them to be as fine moneyes, which are currant not onely by the stampe because they are so received, but by the naturall metall, that is the reason and wisedome of them.

And *Master Littleton* himselfe in his whole booke doth commend but two things to the professors of the law by the name of his sonnes; the one the inquiring and searching out the reasons of the law, and the other, the observing of the formes of pleadings. And never was there any case that came in Iudgement, that required more than *Littletons* advice should be followed in those two points, then doth the present case in question. And first of the King.

It is evident that all other common-wealths (Monarchies onely excepted) doe subsist by a law preecedent. For where authority is divided amongst many officers, and they not perpetuall, but annuall or temporary

rary, and not to receive their authority but by election, and certaine persons to have voice onely to that election, and the like: These are busie and curious frames: which of necessity doe presuppose a law precedent written or unwritten to guide and direct them. But in Monarchies, especially hereditary, that is when severall families, or lineages of people doe submit themselves to one line, Imperiall or Royall, the submission is more naturall and simple, which afterwards by lawes subsequnt is perfected and made more formall: but that is grounded upon nature. That this is so, it appeareth notably in two things; the one, the platformes and patternes which are found in nature of Monarchies, the original submissions, & their motives and occasions. The platformes are three.

The first is that of a father, or chiefe of a family: who governing over his wife by prerogative of Sexe, over his children by prerogative of age, and because he is author unto them of being; and over his servants by prerogative of vertue and providence, for he that is able of body, and improvident of mind, is *Natura servus*) that is a very modell of a King. So that is the opinion of *Aristotle*, *Lib. 3. Pol. Cap. 14*, where he saith: *Verum autem regnum est, cum penes unum est rerum summa potestas: quod regnum procuratorem familiae imitatur.*

And therefore *Lycurgus*, when one counsell'd him to dissolve the kingdome and to establish another forme of estate, he answered, Sir begin to doe that which you advise first at home in your owne house noting that the chief of a family is as a King; and that those that can least endure Kings abroad, can be content

rent to be Kings at home, & this is the first platforme, which we see is meerely naturall.

The second is, that of a Shepheard and his flocke, which *Zenophon* saith, *Cyrus* had ever in his mouth. For shepheards are not owners of the sheepe, but their office is to feede and governe: no more are Kings, *proprietaries*, or owners of the people, for God is sole owner of people. The nations, as the Scripture saith, are his inheritance: But the office of Kings is to governe, maintaine, and protect people. And that is not without a mystery, that the first King that was instituted by God, *David*, (for *Saul* was but an untimely fruit) was translated from a shepheard, as you have it in the 78. *Psal.* *Et elegit David servum suum, de gregibus ovium sustulit eum, pascere Iacob servum suum, Israel hereditatem suam.* This is the second platforme, a worke likewise of nature.

The third *platforme* is the government of God himselfe over the world, whereof lawfull *Monarchies*, are a shadow. And therefore both amongst the heathen, and amongst the Christians the word (*sacred*) hath beene attributed unto Kings, because of the conformity of a Monarchy, with the divine Majesty; never to a Senate or people. And so you finde it twice in the Lord *Cookes* Reports: once in the second booke, the Bishop of *Winchesters* case; and his first booke, *Cawdries* case, and more anciently in the 10. of *H.* 7. fo. 18. *Rex est persona mixta cum Sacerdote*; an attribute which the senate of *Venice*, or a *Canton* of *Swisses*, can never challenge. So we see there be presidents, or platformes of *Monarchies*, both in *Nature* and above *Nature*: even from the Monarch of heaven and earth

earth; to the King (if you will) in an hive of bees. And therefore other States are the creatures of the law; and this State onely subsisteth by *Nature*.

For the originall submissions, they are foure in number : I will briefly touch them : The first is *Paternity* or *Patriarchy*, which was when a family growing so great as it could not containe it selfe within one habitation, some branches of the descendents were forced to plant themselves into new families; which second families could not by a naturall instinct, and inclination, but beare a reverence and yeeld an obedience to the eldest line of the ancient family, from which they were derived.

The second is, the admiration of vertue, or gratitude towards merit, which is likewise naturally infused into all men. Of this *Aristotle* putteth the case well, when it was the fortun of some one man, either to invent some Arts of excellent use towards mans life; or to congregate people that dwelt scattered, into one place, where they might cohabite with more comfort; or to guide them from a more barren land to a more fruitful, or the like: Vpon these deserts, and the admiration and recompence of them, people submitted themselves.

The third, which was the most usuall of all, was Conduct in warre, which even in nature induceth as great an obligation; as *Paternity*. For as men owe their life and being to their *Parents*, in regard of generation: So they owe that also to *Saviours* in the warres, in regard of preservation. And therefore we finde in the 18. Chap. of the booke of *Iudges*, verse 22. *Dixerunt omnes viri ad Gedeon, Dominare nostri, tu et filij tui, quoniam servasti nos de manu Madian.* And so

we reade when it was brought to the eares of *Saul* that the people sung in the streets, *Saul* hath kild his thousand, & *David* his ten thousand of enemies; he said straightwaies: *Quid ei superest nisi ipsum regnū?* for whosoever hath the military dependance, wants little of being King.

The fourth is an enforced submission, which is Conquest, whereof it seemed *Nymrod* was the first president, of whom it is said, *Ipse capit potens esse in terra, et erat robustus venator coram Domino.* And this likewise is upon the same root, which is the saving or gift as it were of life, and being, for the Conqueror hath power of life and death over his Captives, and therefore where he giveth them themselves, he may reserve upon such a gift, what service and subjection he will. All these foure submissions are evident to be naturall and more ancient than law.

To speake therefore of Law, which is the second part of that which is to be spoken of, by way of inducement. Law no doubt is the great Organ by which the soveraigne power doth move, and may be truly compared to the sinewes in a naturall body, as the *Soveraignty* may be compared to the spirits, for if the Sinewes be without the spirits, they are dead and without motion, If the spirits move in weake sinewes it causeth trembling: so the lawes without the *Kings* power, are dead; the *Kings* power except the lawes be corroborate, will never move constantly, but be full of staggering and trepidation. But towards the *King* himself, the law doth a double office or operation: The first is to entitle the *King*, or designe him; and in that sense *Bracton* saith well. *Lib. 1. fol. 5. and Lib. 3. fol. 107. Lex facit quod ipse sit Rex*, that is it

it defines his title, as in our law, that the kingdome shall goe to the issue female: That it shall not be de-partable amongst daughters: That the halfe bloud shall not be respected, and other points differing from the rules of common inheritance. The second is (that whereof we need not feare to speake in good and happy times, such as these are) to make the ordinary power of the King more definite or regular, for it was well said by a Father, *plenitudo potestatis, est plenitudo tempestatis*. And although the King, in his Person, be *Solutus Legibus*; yet his Acts and Grants are limited by Law, and we argue them every day.

But I demand, Do these offices or operations of law evacuate or frustrate the originall submission, which was naturall? or shall it be said that all allegiance is by law? No more than it can be said, that *potestas patris*, the power of the Father over the Child, is by Law: and yet no doubt Lawes do diversely define of that also; the Law of some Nations having given Fathers power to put their Children to death; others, to sell them thrice, others to disinherit them by testament at pleasure, and the like. Yet no man will affirm, that the obedience of the child is by law, though lawes in some points doe make it more positive. And even so it is of allegiance of Subjects to hereditary *Monarches*; which is corroborate and confirmed by law, but is the worke of the law of nature. And therefore you shall finde the observation true, and almost generall in all states, that their law-givers were long after their first Kings, who governed for a time by naturall equity without law; So was *Theseus* long before *Solon* in *Athens*: so was *Eurition* and *Sous*

long before *Lycurgus* in *Sparta*. So was *Romulus* long before the *Decemviri*. And even amongst our selves, there were more ancient *Kings* of the *Saxons*; and yet the Lawes ran under the name of *Edgars* Lawes. And in the reſounding of the *Kingdome* in the perſon of *William* the Conqueror, when the Lawes were in ſome confuſion for a time, a man may truly ſay, that *King Edward* the firſt, was the firſt Law-giver, who enacting ſome Lawes, and collecting others, brought the Law to ſome perfection. And therefore I will conclude this point with the Style which divers Acts of Parliaments do give unto the *King*: which terme him very effectually and truly, *Our Naturall Sovereigne Liege Lord*. And as it was ſaid by a principall Judge here preſent when he ſerved in another place; and queſtion was moved by ſome occaſion of the title of *Bulleins* Lands; That he would never allow, that *Queene Elizabeth*. (I remember it for the efficacy of the phraſe) ſhould bee a Statute *Queene*, but a *Common Law Queen*: So ſurely I ſhall hardly conſent, that the *King* ſhall be eſteemed or called only, *Our Rightfull Sovereigne*, or *Our Lawfull Sovereigne*; but our Naturall Liege Sovereigne; As Acts of Parliament ſpeake: For as the common Law is more worthy than the *Statute Law*: So the Law of *Nature* is more worthy than them both. Having ſpoken now of the *King* and the Law: it remaineth to ſpeake of the priviledge and benefit of *Naturalization* it ſelfe, and that according to the rules of the Law of *England*. *Naturalization* is beſt diſcerned in the degrees whereby the Law doth mount and aſcend thereunto. For it ſeemeth admirable unto mee, to conſider with what

what a measured hand, and with how true proportions our Law doth impart and conferre the severall degrees of this benefit : The degrees are foure.

* The first degree of persons, (as to this purpose) that the Law takes knowledge of, is an Alien *Enemy*: that is such a one as is borne under the obeisance of a Prince or State that is in hostility with the *King of England*. To this person the Law giveth no benefit or protection at all, but if hee come into the Realme after war proclaimed, or war in fact, he comes at his own perill, hee may be used as an enemy: For the Law accounts of him, but (as the Scripture saith) as of a *Spye* that comes to see the weaknesse of the land. And so it is 2. of *Ric.* the 3, fo. 2. Neverthelesse, this admitteth a distinction. For if he come with safe conduct, otherwise it is. For then he may not be violated, either in person or goods. But yet hee must fetch his Justice at the fountaine head, for none of the Conduit pipes are open to him, he can have no remedy in any of the Kings Courts: but he must complain himselfe before the Kings Privy Councell: There he shall have a proceeding summary from houre to houre, the cause shall be determined by naturall equity, and not by rules of *Law*, and the decree of the Councell shall be executed by ayde of the Chauncery, as is 13. *Edw.* 4. An this is the first degree.

The second person, is an Alien friend, that is such a one as is borne under the obeisance of such a *King* or *State*, as is confederate with the *King of England*, or at least not in war with him. To this person the Law allotteth this benefit, that as the Law accounts that the hold it hath over him, is but a transitory hold

(for he may be an *Enemy*) So the Law doth indue him, but with a transitory benefit, that is of moveable goods and personall actions. But for free-hold, or lease, or actions reall, or mixt: he is not inabled, except it be in *auter droit* And so it is 9, E.4, fo.7. 19. E.4, fo.6.5. *Ma.* and divers other books.

The third person is a *Denizon*, using the word properly; (for sometime it is confounded with a naturall borne subject.) This is one, that is but *Subditus insitivus*, or *adoptivus*, and is never by birth, but only by the *Kings* Charter, and by no other meane; come he never so young into the Realme, or stay he never so long. Mansion or Habitation will not indenise him, no nor swearing obedience to the King in a Leete, which doth in-law the subject; but only (as I said) the *Kings* grace and gift. To this person the Law giveth an ability and capacity abridged, not in matter but in time. And as there was a time, when hee was not subject: So the Law doth not acknowledge him before that time. For if he purchase free-hold after his *Denization*, he may take it; but if he have purchased any before, he shall not hold it: So if hee have children after, they shall inherit, but if hee have any before, they shall not inherit: So as he is but privileged *à parte post*, as the Schoole-men say, and not *à parte ante*.

The fourth and last degree, is a *Naturall* borne subject, which is evermore by birth, or by Act of Parliament; and he is compleate and entire. For in the Law of *England*, there is *nil ultra*, there is no more subdivision or more subtile division beyond these: And therein it seemeth to mee that the wisdom of the

the Law (as I said) is to be admired both ways, both because it distinguisheth so far, and because it doth not distinguish further. For I know that other Lawes do admit more curious distinction of this priviledge; For the *Romanes* had besides *Ius Civitatis*, which answereth to *Naturalization*, *Ius Suffragii*. For although a man were naturalized to take lands and inheritance; yet he was not inabled to have a voyce at passing of Laws, or at election of Officers. And yet further they have *Ius Petitionis*, or *Ius Honorum*. For though a man had voyce, yet he was not capable of honour, and office. But these be the devises commonly of popular or free estates, which are jealous whom they take into their number, and are unfit for *Monarchies*: But by the Law of *England* the subject that is naturall borne, hath a capacity or ability to all benefits whatsoever; I say capacity or ability. But to reduce *Potentiam in actum*, is another case. For an *Earle of Ireland*, though he be naturalized in *England*, yet hath no voyce in Parliament of *England*, except he have either a call by Writ, or a creation by Patent, but he is capable of either. But upon this quadripartite division of the ability of persons, I doe observe to your Lordships three things, being all effectually pertinent to the question in hand.

The first is, that if any man conceive that the reasons for the *Post-nati* might serve as well for the *Ante-nati*; He may by the distribution which wee have made, plainly perceive his error. For the Law looketh not back, and therefore cannot by any matter *ex post facto*, after birth, alter the state of the birth; wherein no doubt the Law hath a grave and profound

found reason, which is this in few words, *Nemo subito fingitur; aliud est nasci, aliud fieri*: Wee indeed more respect and affect these worthy Gentlemen of *Scotland* whose merits and conversations we know: but the Law that proceeds upon generall reason and looks upon no mens faces, affecteth and priviledgeth those, which drew their first breath under the obedience of the *King of England*.

The second point is, that by the former distribution, it appeareth that there be but two conditions by birth, either *Alien* or naturall borne (*nam tertium penitus ignoramus.*) It is manifest then, that if the *Post nati* of *Scotland*, be not naturall borne, they are alien born and in no better degree at all, than *Flemmings, French, Italians, Spanish, Germans*, and others, which are all at this time *Alien friends*, by reason his Majesty is in peace with all the World.

The third point seemeth to mee very worthy the consideration, which is, that in all the distribution of persons, and the degrees of abilities or capacities, the *Kings Act* is all in all, without any manner of respect to Law or Parliament. For it is the *King*, that makes an *Alien* enemy, by proclaiming a war, wherewith the Law, or Parliament intermeddles not: So the *King* only grants Safe-conducts, wherewith Law and Parliament intermeddle not. It is the *King* likewise that maketh an *Alien friend*, by concluding a peace, wherewith Law and Parliament intermeddle not. It is the *King* that makes a Denizon, by his Charter absolutely of his prerogative and power, wherewith Law and Parliament intermeddle not. And therefore it is strongly to be inferred, that as all these degrees de-

pend

pend wholly upon the *Kings* act, and no wayes upon *Law* or *Parliament* : So the fourth, although it cannot by the *Kings Patent*, but by operation of *Law* : yet that the law, in that operation, respecteth onely the *Kings* person, without respect of subjection to *Law* or *Parliament*. And thus much by way of explanation, and inducement : which being all matter in effect confessed, is the strongest ground-werke to that which is contradicted or controverted.

There followeth the confutation of the Arguments on the contrary side.

That which hath beene materially objected may be reduced to foure heads.

The first is, that the privilege of *Naturalization*, followeth *Allegiance*, and that *allegiance* followeth the *Kingdome*.

The second is drawne from that common ground, *Cum duo jura concurrunt in una persona, æquum est, ac si essent in duobus* ; a rule, the words whereof are taken from the *Civill Law* ; but the matter of it is received in all lawes ; being a very line or rule of reason to avoyd confusion.

The third consisteth of certaine inconveniencies conceived to ensue of this generall naturalization *ipso jure*.

The fourth is not properly an objection, but a preoccupation of an objection or prooffe on our part, by a distinction devised betweene Countries devolute by descent, and acquired by *Conquest*.

For the first, it is not amisse to observe that those which maintaine this new opinion, whereof there is *altum Silentium* in our bookes of *Law*, are not well

agree in what forme to utter and expresse that : for some said that allegiance hath respect to the Law, some to the Crowne, some to the Kingdome, some to the body politique of the King, so there is confusion of tongues amongst them, as it commonly commeth to passe in opinions, that have their foundations in subtilty, and imagination of mans wit, and not in the ground of nature. But to leave their words, and to come to their proofes, they endeavour to prove this concept, by three manner of proofes. First by reason, then by certaine inferences out of Statutes, and lastly, by certaine booke-cases mentioning and reciting the formes of pleadings.

The reason they bring is this ; That Naturalization is an operation of the Law of *England*, and so indeed it is, that may bee the true *genus* of it.

Then they adde (that granted) that the Law of *England* is of force onely within the Kingdome and Dominions of *England*, and cannot operate, but where it is in force. But the Law is not in force in *Scotland*, therefore that cannot endure this benefit of Naturalization by a birth in *Scotland*.

This reason is plausible and sensible, but extremely erroneous. For the Law of *England*, for matters of benefit, or forfeitures in *England*, operateth over the World. And because it is truly said, that *Respublica continetur*

retur poena, & premio. I will put a case or two of either.

It is plaine that if a Subject of *England* had conspired the death of the King in forraine parts, it was by the **Common Law** of *England* treason. How prove I that? By the Statute of 35. of *H. 8. ca. 2.* wherein you shall find no words at all of making any new case of treason which was not treason before, but onely of ordaining a forme of triall, *Ergo* it was treason before. And if so, then the **Law** of *England* workes in forraine parts. So of contempts, if the King send his Privy Seale to any Subject beyond the Seas, commanding him to returne, and hee disobey; no man will doubt, but there is a contempt, and yet the fact enduring the contempt was committed in forraine parts.

Therefore the **Law** of *England*, doth extend to Acts or matters done in forraine parts. So of reward, Priviledge or benefit wee need seeke no other instance; then the instance in question, for I will put you a case that no man shall deny, where the **Law** of *England* doth worke and conferre the benefit of Naturalization upon a birth neither within the Dominions of the Kingdome, nor King of *England*. By the Statute of 25. *E. 3.* which, if you will beleeve *Hussey*, is but a Declaration of the **Common Law**, all children borne in any parts of the World, if they be of *English* Parents, continuing at that time, as liege Subjects to the King, and having done no act to forfeit the benefit of

their allegiance are *ipso facto* naturalized. Nay if a man looke narrowly into the Law in this point, he shall find a consequence, that may seeme at the first strange, but yet cannot well be avoided ; which is that if divers Families of *English*-men and women plant themselves at *Middleborough* or at *Roane*, or at *Lyscone*, and have issues, and their descendents doe intermarry, amongst themselves without any intermixture of forraine blood; such descendents are naturalized to all generations, for every generation is still of liege Parents, and therefore naturalized. So as you may have whole tribes, and lineages of *English* in forraine Countries.

And therefore it is utterly untrue that the Law of *England* cannot operate, or conferre naturalization, but onely within the bounds of the Dominions of *England*.

To come now to their inferences upon Statutes. The first is out of this Statute which I last recyted. In which Statute it is said, that in foure severall places, there are words ; borne within the allegiance of *England* ; or againe borne without the allegiance of *England*, which (say they) applies the allegiance to the Kingdome, and not to the person of the King. To this the answer is easie : for there is no trope of speech more familiar then to use the place of addition for the person. So we say commonly the lyne of *Yorke*, or the lyne of *Lancaster*, for the lynes of the Duke of *Yorke* or the Duke of *Lancaster*.

So we say the possessions of *Sommerfet* or *Warwick* intending the possessions of the Dukes of *Sommerfet*, or Earles of *Warwick*. So we see Earles signe, *Salisbury*, *Northampton*, for the Earles of *Salisbury* or *North-*

Northampton. And in the very same manner, the Statute speaks, allegiance of *England*, for allegiance of the King of *England*. Nay more if there had been no variety in the penning of that Statute, this collection had had a little more force, for those words might have been thought, to have been used of purpose, and in propriety; but you may find in three other severall places of the same Statute, *Allegiance* and *obeyfance* of the King of *England*, and specially in the materiall and concluding place, that is to say, children whose Parents were at the time of their birth, at the faith and *obeyfance* of the King of *England*, so that is manifest by this indifferent and promiscuous use of both Phrases, the one proper, the other improper, that no man can ground any inference upon these words without danger of cavillation.

The second Statute out of which they inferre, is a Statute made in 32. of *H. 8. ca.* touching the policy of strangers trades men within this Realme. For the *Parliament* finding, that they did eate the *Englishmen* out of trade, and that they entertained no Apprentizes, but of their owne Nation, did prohibite that they should receive any Apprentize, but the Kings Subjects. In which Statute is said, that in 9. severall places, there is to be found this context of words, *Aliens borne out of the Kings obedience*; which is pregnant (say they) and doth imply that there bee *Aliens borne within the Kings obedience*. Touching this inference I have heard it said. *Qui haeret in litera, haeret in cortice*, but this is not worthy the name of *Cortex*, it is but *muscus corticis*, the mosse of the barke. For it is evident that the Statute meant to

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speake

speake clearely and without equivocation, and to a common understanding. Now then there are *aliens* in common reputation & *aliens* in precise construction of Law; The Statute then meaning not to comprehend *Irish-men*, or *Gersie-men*, or *Calize-men*, for explanation sake, lest the word *alien* might be extended to them in a vulgar acceptance, added those further words, borne out of the Kings obedience? Nay, what if we should say, that those words according to the received Lawes of Speech, are no words of difference or limitation, but of declaration or description of an *alien*, as if it had beene said with a *videlicet, aliens*; that is such as are borne out of the Kings obedience: they cannot put us from that construction. But sure I am, if the barke make for them, the pyth makes for us, for the Priviledge or liberty which the Statute meanes to deny to *Aliens* of entertaining Apprentizes is denied to none, borne within the Kings obedience, call them *Aliens* or what you will. And therefore by their reason a *post-Natus* of *Scotland* shall by that Statute keepe what stranger Apprentizes he will, and so is put in the degree of an *English*. The third Statute out of which inference is made, is the Statute of 14. E. 3. *ca. solo*, which hath been said to be our very case, and I am of that opinion too, but directly the other way, therefore to open the scope and purpose of that Statute. After that the title to the Crowne of *France*, was devolute to K. E. 3. & that he had changed his Stile, changed his Armes, changed his Seale, (as his Majestie hath done) the Subject of *England* (saith the Statute) conceived a feare that the Realme of *England* might become subject to the Realme of *France*, or to the K. as K. of *France*. And I will give you the reasons

of the double feare, that it should become subject to the Realme of *France* they had this reason of feare: *Normandy* had conquered *England*; *Normandy* was feudall of *France*, therefore because the superiour Seignory of *France* was now united in right with the Tenancy of *Normandy*, and that *England*, in regard of the conquest might be taken as a perquisite to *Normandy*, they had propable reason to feare, that the Kingdome of *England* might be drawne to be subject to the Realme of *France*. The other feare that *England* might become subject to the K. as K. of *France* grew no doubt of this fore-sight, that the Kings of *England* might be like to make their mansion and seate of their estate in *France*, in regard of the Climate, wealth, and glory of that Kingdome; and thereby the Kingdome of *England* might be governed by the Kings mandates and precepts issuing, as from the King of *France*. But they will say whatsoever the occasion was, here you have the difference authoris'd of subjection to a K. generally, and subjection to a King, as K. of a certaine Kingdome, but to this I give an answer three-fold.

First, it presseth not the question; for doth any man say that a *Post-natus* of *Scotland* is naturalized in *England*, because he is a subject of the King, as K. of *England*? No, but generally, because he is the K. Subject.

Secondly, the scope of this Law is to make a distinction between Crown, and Crown; But the scope of their argument is to make a difference between Crowne and person. Lastly, this Statute (as I said) is our very case retorted against them, for this is a direct Statute of separation, which presupposeth that the Common Law had made an union of the Crownes in some degree, by vertue of the union.

union in the Kings person : if this Statute had not beene made to stop & crosse the course of the common Law in that point, as if *Scotland* now should be suitors to the King, that an Act might passe to like effect, and upon like feare. And therefore if you will make good your distinction, in this present case ; shew us a Statute for that. But I hope you can shew no Statute of separation betweene *England* and *Scotland*. And if any man say, that this was a Statute declaratory of the Cōmon Law, he doth not marke how that is penned : for after a kind of Historically declaration in the Preamble, that *England* was never subject to *France*, the body of the Act is penned thus : *The King doth grant and establish*, which are words meerly introductive *novæ legis* as if the King gave a Charter of *Franchise*, and did invest by a *Donative*, the Subjects of *England* with a new Priviledge or exemption, which by the Cōmon Law they had not.

To come now to the booke-cases which they put : which I will couple together because they receive one joynt answer.

The first is 42. of E. 3. fo. where the booke saith : exception was taken that the plaintife was borne in *Scotland* at *Rosse*, out of the allegiance of *England*.

The next is 22. H. 6. fo. 38. *Adrians Case*, where it is pleaded that a woman was borne at *Burgis*, out of the allegiance of *England*.

The third is 13. Eliz. Dyer fo. 300 where the case begins thus : *Doctor Story qui notorie dignoscitur esse subditus regni Angliæ*. In all these three (say they) that is pleaded that the party is subject of the Kingdome of *England*, and not of the King of *England*.
To

To these bookes I give this answer, that they be not the Pleas at large, but the words of the Reporter, who speakes compendiously and narrative, and not according to the solemne words of the pleading. If you find a case put, that it is pleaded, a man was seized in Fee-simple, you will not inferre upon that, that the words of the pleading were *in feodo simplici*, but *sibi & heredibus suis*. But shew mee some president of a pleading at large of *Natus sub legeantia Regni Anglia*; for whereas Mr. Walter said that pleadings are variable in this point, he would faine bring it to that; but there is no such matter: For the pleadings are constant, and uniforme in this point; they may vary in the word *fides*, or *legeantia*, or *obedientia*, and some other circumstances, but in the forme of *Regni* and *Regis*, they vary not: neither can there, as I am perswaded be any one instance shewed forth to the contrary. See 9. Eliz. 4. *Baggots Affize*, f. 7. where the pleading at large is entred in the booke; There you have, *alienigena natus extra legeantiam domini Regis Anglia*. See the presidents in the Booke of Entries, Pl. 7. and two other places; for there beno more, and there you shall find still *sub legeantia domini Regis*, or *extra legeantiam Domini Regis*. And therefore the formes of pleading, which are things so reverend, and are indeed towards the Reasons of the Law, as *Palma*, and *Pugnus*, conteyning the Reason of the Law, opened or unfolded, or displayed, they make all for us. And for the very words of Reporters in bookes, you must acknowledge and say, *Illicet obruiuntur numero*. for you have 22. Aff.

Pl. 25. 27. aff. the Pryor of Skellyes case Pl. 48. 14. H. 4. f. 19. 3. H. 6. f. 35. 6. H. 8. in my Lord Dyer, fol. 2. In all these bookes, the very words of the Reporters have the *allegeance* of the King, and not the *allegeance* of *England*. And the booke in the 24. of *Eliz. 3.* which is your best booke, although while it is tossed at the Bar, you have sometimes the word *allegeance* of *England*, yet when it comes to *Thorpe* chiefe Iustice to give the rule, he saith; we will be certified by the Role, whether *Scotland* be within the *allegeance* of the King. Nay that further forme of pleading beareth downe your opinion. That it sufficeth not to say, that he is borne out of the *allegeance* of the King, and stay there, but he must shew in the affirmative under the *allegeance* of what King, or state he was borne. The Reason whereof cannot be because it may appeare, whether he be a friend or an enemy, for that in a reall action is all one: nor it cannot be because issue shalbe taken thereupon; for the issue must arise on the other side upon *indigena* pleaded and traversed. And therefore it can have no other reason, but to apprise the court more certainly, that the countrey of the birth is none of those, that are subject to the King. As for the tryall, that it should be impossible to de tryed, I hold it not worth the answering; for the *venire facias*, shall goe either where the naturall birth is laid, although it be but by fiction, or if it be laid according to the truth, it shalbe tryed where the action is brought, otherwise you fall upon a maine Rock, that breaketh your *Argument* in pieces, for how should the birth of an *Irish-man* be tryed; or of a
Gersie

Geisſe man? Nay how ſhould the birth of a ſubject be tryed that is borne of *Engliſh Parents* in *Spain* or *Florence*, or any part of the world? for to all theſe the like objection of tryall may be made, becauſe they are within no Counties, and this receives no answer. And therefore I will now paſſe on to the ſecond maine *Argument*.

It is a rule of the Civill Law, ſay they, *cum duo jura, &c.* when two rights doe meete in one perſon there is no confuſion of them, but they remain ſtill in eye of law diſtinct, as if they were in ſeverall perſons; and they bring examples of one man Biſhop of two Seas, or one perſon that is Rector of two Churches. They ſay this unity in the Biſhop, or the Rector doth not create any privy between the Pariſhioners or Dioceſeners, more then if there were ſeverall Biſhops, or ſeverall Parſons. This rule I allow (as was ſaid) to be a Rule not of the Civill Law onely, but of common reaſon, but receiveth no forced or coyned, but a true and ſound diſtinction, or limitation, which is, that it evermore faileth and deceiveth in caſes, where there is any vigor, or operation of the naturall perſon; for generally in corporations the naturall body is but *ſuſſulcimentum corporis corporati*, it is but as a ſtock to uphold and beare out the corporate body, but otherwiſe it is in the caſe of the Crown, as ſhall be manifeſtly proved in due place. But to ſhew that this rule receiveth this diſtinction, I will put but two caſes. The ſtatute of the 21. *Hen. 8.* ordaineth that a Marqueſſe may retain ſixe *Chaplaines* qualified, a Lord *Treaſurer* of *England* foure, a *Privie Counſellour* three.

The Lord *Treasurer Paulet* was Marquesse of *Winchester*, Lord Treasurer of *England* and privie counsellor all at once. Question was whether hee should qualifie 13. Chaplaines. Now by the Rule *cum duo Iura*, he should : but adjudged, he should not. And the Reason was because the attendance of Chaplaines concerned and respected his naturall person, he had but one soule, though he had three Offices. The other case which I will put, is the case of Homage, a man doth homage to his Lord for a Tenancie held of the mannor of Dale, there descendeth unto him afterwards a Tenancie held of the mannor of Sale, which mannor of Sale is likewise in the hands of the same Lord. Now by the Rule *cum duo jura*, he should doe homage againe, two Tenancies and two Seignories, though but one Tenant, and one Lord, *aequum est ac si esset in duobus*. But ruled that he should not doe homage againe : nay in the Case of the King, hee shall not pay a second respect of Homage, as upon grave and deliberate consideration it was resolved, 24. H. 8. and *Vfus Scaccarii*, as is there said accordingly. And the Reason is no other but because when a man is sworne to his Lord, hee cannot be sworne over againe, he hath but one Conscience, and the Obligation of this Oath, trencheth betweene the naturall person of the Tenant, and the naturall person of the Lord. And certainly the Case of Homage and Tenure, and of Homage Liege, which is one case, are things of a neere Nature, save that the one is much inferiour to the other, but it is good to behold these great matters of State in cases of lower Element, as the Eclipse of the Sun is used.

used to be in a pail of Water.

The third maine Argument conteyneth certain supposed inconveniences, which may ensue of a generall Naturalization *ipso jure*, of which kind three have bin specially remembred.

The first is the losse of profits, to the King upon Letters of Denization, and purchases of *Aliens*.

The second is the concourse of *Scottishmen* into this Kingdome, to the infeebling of that Realme of *Scotland* in people, and the impoverishing of this Realme of *England* in wealth.

The third is, that the reason of this case stayeth not within the compasse of the present case; for although it were some reason that *Scottishmen* were naturalized being people of the same *Island* and *language*, yet the reason which we urge, which is, That they are subject to the same King, may be applyed to persons every way more estranged from us then they are, as if in future time in the Kings descents, there should be a match with *Spaine*, and the Dominions of *Spaine* should bee united with the Crowne of *England* by one reason (say they) all the *Vest-Indies* should be naturalized; which are people not onely, *alterius Soli* but *alterius Cæli*. To these conceits of inconvenience, how easie it is to give answer, and how weake they are in themselves, I thinke no man that doth attentively ponder them can doubt; For how small revenue can arise of such *Denizations*, and how honourable it were for the King to take escheats of his Subjects, as if they were *forreyners* (for seifure of *aliens* Lands are in regard the King hath no hold or command of their persons

persons, and services) every one may perceive. And for the confluence of *Scottishmen*, I thinke wee all conceive the *Spring-tide* is past at the Kings first comming in. And yet wee see very few families of them, throughout the Cities & Boroughes of *England*. And for the naturalizing of the *Indies*, we can readily helpe that, when the case comes; for we can make an act of *Parliament* of separation if we like not their consort. But these being Reasons politique, and not legall (and we are not now in *Parliament*, but before a Judgment Seate) I will not meddle with them, specially since I have one answer which avoids and confounds all their objections in *Law*, which is that the very self-same *objections* doe hold in Countreyes purchased by Conquest. For in Subjects obtained by Conquest, it were more profit to indenizate by the Poll, in Subjects obteyned by Conquest, they may come in too fast. And if King *Hen. 7.* had accepted the offer of *Christopher Columbus*, whereby the Crowne of *England* had obteyned the *Indies* by conquest or occupation, all the *Indies* had bin naturalized by the confession of the adverse part. And therefore since it is confessed, that Subjects obteyned by Conquest are naturalized, & that all these objections are common and indifferent, as well to case of Conquest, as case of descent, these objections are in themselves destroyed.

And therefore to proceed now to overthrow that distinction of descent and Conquest. *Plato* saith well, the strongest of all authorities is, if a man can alledge the authority of his adversaries against himselfe, we doe urge the Confession of the other side, that

that they confessed the *Irish* are *naturalized*, that they confesse the Subjects of the *Iles of Gerse and Garnsey*, and *Barwick* to be *naturalized*, and the subjects of *Calice* and *Tourney* when they were English were *naturalized*, as you may find in the 5. E. in *Dyer*, upon the question put to the Judges by Sir *Nicholas Bacon* Lord Keeper.

To avoid this, they flye to a difference, which is new coyned, and is (I speake not to the disadvantage of the persons that use it; for they are driven to it *tanquam ad ultimum refugium*, but the difference it selfe) it is I say full of *ignorance and error*. And therefore to take a view of the supports of this difference, they alledge foure Reasons.

The first is, that Countreyes of Conquest, are made parcell of *England*; because they are acquired by the Armes and Treasure of *England*. To this I answer, That it were a very strange *Argument*, that if I waxe rich upon the *Mannor of Dale*, and upon the Revenue thereof purchase a close by it, that it should make that parcell of the *Mannor of Dale*. But I will set this new Learning on ground with a question or case put. For I oppose them that hold this opinion with this Question, if the King should conquer any Forreigne Countrey by an Army compounded of *English-men* and *Scottish-men*, as it is like whensoever Warres are, so it will be. I demand whether this Countrey conquered shall be *naturalized* both in *England* and *Scotland*, because it was purchased by the joynt Armes of both? And if yea, whether any man will thinke it reasonable, that such Subjects bee *naturalized*

in both Kingdomes, the one Kingdome not being naturalized towards the other? *These are the intricate consequences of Conceits.*

A second reason they alledge, is, that Countreyes won by Conquest become subject to the Lawes of *England*, which *Countries Patrimoniall* are not, and that the Law doth draw the *Allegance*, and *Allegance Naturalization*.

But to the *Major proposition* of that *Argument*, touching the dependancy of *allegance* upon Law, somewhat hath bin already spoken, and full answer shalbe given when we come to it. But in this place it shall suffice to say, that the *Minor proposition* is false, that is, that the Lawes of *England* are not superinduced upon any Countrey by Conquest; but that the old Lawes remaine untill the King by his *Proclamation* or *Letters-patents* declare other Lawes, and then if he will, hee may declare Lawes which be utterly repugnant, and differing from the Lawes of *England*. And hereof many antient *Presidents* and *Records* may be shewed; that the Reason why *Ireland* is subject to the Lawes of *England* is not *ipso jure* upon conquest; but grew by a *Charter* of K. John, and that extended but to so much as was then in the Kings possession, For there are *Records* in the time of King. S. 1 and 2 of divers particular Grants to sundry Subjects of *Ireland*, and their Heires, that they might use and observe the Lawes of *England*.

The third Reason is, that there is a politique necessity of intermixture of people in case of subjection, by Conquest to remove alienations of mind, &c

to secure the State, which holdeth not in case of descent. Here I perceive Mr. Walter hath read somewhat in matter of State, and so have I likewise, though we may both quickly lose ourselves in cause of this Nature. I find by the best opinions, that there bee two meanes to assure and retaine in obedience Countreyes conquered, both very differing, almost in extreames the one towards the other.

The one is by Colonies, and intermixture of people, and transplantation of families, which Mr. Walter spoke off, and it was indeed the *Romane* manner: but this is like an old relique, much revered and almost never used. But th'other which is the modern manner, and almost wholly in practice & use, is by Garrisons and Citadelles, and Lifts or Companies of men of warre, and other like matters of terrour and bridle.

To the first of these (which is little used) it is true that *naturalization* doth conduce, but to the latter it is utterly opposite, as putting too great pride, and meanes to do hurt, in those that are meant to be kept short and low. And yet in the very first case of the *Romane* proceeding, *Naturalization* did never follow by Conquest, during all the growth, of the *Romane Empire*, but was ever conferred by Charters, or Donations, sometimes to Cities, and Townes, sometimes to particular persons, & sometimes to Nations, untill the time of *Adrian the Emperour*, and the Law in *Orbe Romano*, and that Law or constitution is not referred to title of Conquest and Armes onely, but to all other titles; as by the Donation and Testament of Kings, by submission and

dedition of States, or the like. So as this difference was as strange to them, as to us. And certainly I suppose it will sound strangely in the hearing of forreigne Nations, that the law of *England* should *ipso facto*, naturalize subjects of Conquest, and should not naturalize Subjects, which grow unto the King by descent; that is, that it should conferre the benefit and priviledge of naturalization upon such, as cannot at the first but beare hatred and rancor to the state of *England*, and have had their hands in the blood of the Subjects of *England*, and should deny the like benefit to those that are conjoynd with them by a more amiable meane: And that the law of *England*, should conferre *naturalization* upon slaves and vassals (*for people conquered are no better in the beginning*) and should deny it to Free-men: I say it will be marvelled at abroad, of what complexion the lawes of *England* bee made, that breedeth such differences. But there is little danger of such scandals; for this is a difference, that the law of *England* never knew.

The fourth reason of this difference is, that in case of Conquest, the territory united can never be separated againe. But in case of descent, there is a possibility, if his Majesties line should faile, the Kingdomes may sever againe to their respective heires, as in the case of 8. H. 6. where it is said, that if Land descend to a man, from the Ancestor, on the part of his Father, and a rent issuing out of it, from an Ancestor, on the part of the mother, if the party dye without issue, the Rent is revived. As to this Reason, I know well the continuance of the Kings line.

line, is no lesse deare to those, that alleadge the reason, then to us that confute it. So as I doe not blame the passing of the reason; but it is answered with no great difficulty; for first the law doth never respect remote and forrein possibilities, as notably appeared in the great case betweene Sir *Hugh Cholmley*, and *Houlford* in the Exchequer, where one in the remainder, to the end to bridle tenant in tayle from suffering a common recovery, granted his remainder to the King, and because he would be sure to have it out again, without charge or trouble, when his turne was served; he limitted it to the King, during the life of tenant in tayle. Question grew whether this grant of remainder were good, yea or no. And it was said to be frivolous and void, because it could never by any possibility execute; for tenant in tayle cannot surrender, and if he dyed, the remainder likewise ceased. To which it was answered, *that there was a possibility, that it might execute, which was thus*; Put case that tenant in tayle should enter into Religion having no issue: then the remainder should execute, and the King should hold the land during the naturall life of tenant in tayle, notwithstanding his civill death. But the Court *una voce* exploded this reason, and said, *that Monasteries were downe, and entries into Religion gone*; and they must be up againe ere this could be, and that the Law did not respect such remote, and forreine possibilities, & so we may hold this for the like; For I think we all hope, that neither of those days shall ever come, either for *Monasteries* to be restored, or for the King's line to faile, but the true answer is, that *no* possibility

subsequēt, remote, or not remote doth not alter the operatiō of law for the present. For y^e should be, as if in case of the Rent which you put, you should say, that in regard, that the rent may be severed, it should be said, to be in *esse* in the meane time, and should be grantable, which is cleerely otherwise. And so in the principall case, if that should be (which God of his goodnesse forbid) *cessante causā, cessat effectus*, the benefit of naturalization for the time to come is dissolved. But that altereth not the operation of the Law. *Rebus sic stantibus*. And therefore I conclude, that this difference is but a devise full of weaknesse and ignorance: and that there is one, and the same reason of *naturalizing* subjects by descent, and subjects by conquest, and that is the union in the person of the King; and therefore that the case of Scotland is as cleere, as that of Ireland, and they that grant the one, cannot deny the other. And so I conclude the second part, touching *confutation*.

To proceed therefore to the proofes of our part, your Lordships cannot but know many of them must be already spent, in the answer which we have made to the *objections*. For *corruptio unius, generatio alterius*, holdes aswell in *Arguments*, as in *Nature*, the destruction of an *objection* begets a prooffe. But neverthelesse, I will avoid all iteration, least I should seem either to distract your memories, or to abuse your patience; But will hold my selfe onely to these proofs, which stand substantially of themselves, and are not intermixed with matter of *confutation*. I will therefore prove unto your Lordships, that the *post-natus* of Scotland is by the Law of
England

England naturall, and ought so to be adjudged by three courses of prooffe.

1. *First upon point of favour of Law.*
 2. *Secondly, upon reasons and authorities of Law.*
 3. *And lastly, upon former presidents & examples.*
*Favour of Law, what meane I by that? the Law is equall, and favoureth not: It is true, not persons: but things or matters it doth favour. Is it not a common principle, that the Law favoureth three things, Life, Liberty, & Dower? And what is the reason of this favour? This, because our Law is grounded upon the Law of Nature. And these three things doe flow from the Law of Nature, preservation of life Naturall, Liberty, which every Beast or Bird seeketh and affecteth naturall, the society of man and wife, whereof Dower is the reward naturall. It is well, doth the Law favour Liberty so highly, as a man shall infranchise his bondman, when hee thinketh not of it, by granting to him, Lands or Goods? And is the reason of it, quia natura omnes homines erant liberi? and that servitude or villenage, doth crosse and abridge the Law of Nature? And doth not the selfe-same reason hold in the present case; For my Lords by the Law of Nature, all men in the world are naturalized one to wards another, they were all made of one lump of earth, of one breath of God, they had the same common Parents. Nay at the first they were, as the Scripture sheweth, *unius Labii*, of one Language, untill the curse, which curse (thanks be to God) our present case is exempted from. It was *Ciwill and Nationall Lawes*, that brought in these words, and differences of *Civis* and *Externs*,*

Alien & Native And therefore because they tend to abridge the Law of *Nature*, the Law favoureth not them, but takes them strictly, even as our Law hath an excellent rule, that customes of Townes & *Burroughes* shall be taken and construed strictly & precisely, because they doe abridge and derogate from the law of the land. So by the same reason all *Nationall Lawes* whatsoever, are to be taken strictly and hardly in any point wherein they abridge, and derogate from the law of *Nature*. Whereupon I conclude that your Lordships cannot judge the law for the other side, except the case be *Luce clarius*. And if it appeare to you but doubtfull, as I thinke no man in his right senses but will yeeld it, to be at least doubtfull, *Then ought your Lordships (under your correction be it spoken) to pronounce for us because of the favour of the Law.* Furthermore as the law of *England* must favour *Naturalization*, as a branch of the law of *Nature*: so it appeares manifestly, that it doth favour it accordingly. *For is it not much to make a Subject Naturalized? By the law of England, it should suffice, either place or Parents,* if he be born in *England*, it is matter no though his Parents be *Spaniards*, or what you will. On th' other side, if he be borne of *English Parents*, it skilleth not though he be borne in *Spaine*, or in any other place of the World. In such sort doth the *Law of England* open her lappe to receive in people to be *Naturalized*, which indeed sheweth the wisdom and excellent composition of our law. And that it is the law of a Warlike and Magnanimous *Nation*, fit for Empire. For looke, and you shall find that
such

such kind of estates have been ever liberall in point of *Naturalization*: whereas *Marchant-like and envious estates have bin otherwise*. For the reasons of law joyned with authorities, I doe first observe to your *Lordships*, that our assertion or affirmation is simple and plaine: that it sufficeth to naturalization, that there be one King, and that the party be, *natus ad fidem Regis*, agreeable to the definition of *Littleton*: which is, *Alien* is he which is born out of the allegiance of our Lord the King. They of the other side speak of respects, and *quoad* and *quatenus*, and such subtilties and distinctions. To maintaine therefore our assertion, I will use three kindes of proofes.

The first is, that allegiance cannot be applyed to the Law or Kingdome, but to the person of the King, because the Allegiance of the Subject is more large and spacious, and hath a greater latitude, and comprehension, then the Law or the Kingdome. And therefore it cannot be a dependency of that, without the which it may of it selfe subsist.

The second prooffe which I will use, is, that the Naturall body of the King hath an operation and influence into his body politique, as well as his body politique hath upon his body Naturall, And therefore that although his body politique of King of England, and his body politique of King of Scotland be severall and distinct: Yet neverthelesse, his Naturall person, which is one, hath an operation upon both, and createth a privity betweene them.

And

And the third prooffe is the binding text of five severall statutes:

For the first of these I shall make it manifest, that the allegiance is of a greater extent and dimension, then Lawes or Kingdome, and cannot consist by the lawes meereley, because it began before lawes, it continueth after Lawes, and it is in vigour where Lawes are suspended, and have not their force. That it is more antient then law, appeareth by that which was spoken in the beginning by way of inducement, where I did endeavour to demonstrate, that the originall age of Kingdomes was governed by *naturall equity*, that Kings were more antient, then Law-givers, that the first submissions were simple, and upon confidence to the person of Kings, and that the Allegiance of Subjects to hereditary Monarchies, can no more be said to consist by lawes, then the obedience of Children to Parents.

That Allegiance continueth after lawes, I will onely put the case, which was remembered by two great Judges in a great Assembly, the one of them now with God, which was: *that if a King of England should be expulſed his Kingdome, and some particular subjects should follow him in flight, or exile in forreigne parts, and any of them there should conspire his death, that upon his recovery of his Kingdome; such a subject might by the Law of England be proceeded with; for Treason committed and perpetrated at what time he had no Kingdome, and in place wher e the Law did not bind.*

That Allegiance is in vigour and force, where
the

the power of Law hath a cessation appeareth notably in time of Warres, for *silent leges inter arma*. And yet the Sovereignty, and Imperiall power of the King, is so farre, from being then extinguished, or suspended; as contrariwise it is raised, and made more absolute, for then he may proceed by his supreme authority, and Martiall Law without observing formalities of the Lawes of his Kingdome. And therefore whosoever speaketh of Lawes, and the Kings power by Lawes, and the Subjects obedience, or allegiance to Lawes, speake but of one halfe of the Crowne. For *Bracton* out of *Justinian* doth truly define, the Crowne to consist of Lawes and Armes, power Civill and Martiall, with the latter whereof the Law doth not intermeddle, so as where it is much spoken that the Subjects of England are under one Law, and the Subjects of Scotland are under another Law, it is true at *Edenborough* or *Sterling*, or againe in *London*, or *Yerke*; But if Englishmen and Scottishmen meet in an Army Royall before Calice. I hope then they are under one Law. So likewise not onely in time of warre, but in time of peregrination: If a King of England travaile, or passe through forraine territories; yet the allegiance of his Subjects followeth him, as appeareth in that notable case which is reported in *Fleta*, where one of the traine of K. Ed. I. as he past through France from the Holy Land, imbezelled some silver Plate at *Paris*, and Jurisdiction was demanded of this crime by the French Kings Counsell at Law. *Ratione soli*, and demanded likewise by the Officers of K. Edw. *ratione personæ*, and after much solemnity and contestation and interpleading, it was

ruled and determined for King *Edward*, and the party tryed and judged before the Knight Marshall of the Kings house, and hanged after the *English* Law, and execution in *St. Germaines meadowes* : and so much for my first prooffe.

For my second maine prooffe; that is drawn from the true & legall distinction of the Kings severall capacities; for they that maintaine the contrary opinion, doe in effect destroy the whole force of the Kings naturall capacity, as if it were drowned and swallowed up by his politique. And therefore I will first prove to your Lordships, that his two capacities are in no sort confounded; and secondly, that as his capacity politique worketh so upon his naturall person, as it makes it differ from all other the naturall persons of his Subjects : so *converso*, his naturall body worketh so upon his politique, as the corporation of the Crowne utterly differeth from all other Corporations within the Realme.

For the first I will vouch you the very words which I find in that notable case of the Dutchie, where the question was, whether the grants of King *Ed. 6.* for Dutchy lands should be avoyded in points of nonage. The case, as your Lordships know well, is reported by Mr. *Plowden*, as the generall resolution of all the Judges of *England*, and the Kings learned Counsell, *Rusnell* the Solicitour, onely except, there I find the said words, *Comment. fol. 215. There is in the King not a body naturall alone, nor a body politique alone, but a body naturall and politique together, corpus corporatum in corpore naturali, & corpus naturale in corpore corporato.* The like I find in the great case

case of the Lord *Barkley* set downe by the same Reporter, *Commentfol. 234*. *Though there be in the King two bodies, and that those two bodies are conjoynd; yet are they by no meanes confounded the one by the other.*

Now then to see the mutuall and reciprocall intercourse, as I may terme it, or influence, or communication of qualities that these bodies have one upon the other. The body politique of the Crowne indueth the naturall person of the King with these perfections. That the King in Law shall never be said to be within age; that his blood shall never be corrupted; and that, if he were attainted before, the very assumption of the Crown purgeth it. That the K. shall not take but by matter of Record, although he take in his naturall capacity, as upon a gift in taile. That his body in Law shall be said to be as it were immortall, for there is no death of the King in Law, but a demise as it is termed; with many other the like Priviledges, and differences from other naturall persons too long to rehearse, the rather because the question laboureth not in that part. But on the contrary part, let us see what operations the Kings naturall person hath upon his Crowne and body politique: Of which the chiefeft and greatest is, that it causeth the Crowne to goe by descent, which is a thing strange, and contrary to the course of all Corporations, which evermore take in succession, and not by descent, for no man can shew mee in all the Corporations of *England*, of what nature soever, whether they consist of one person, or of many: or whether they be Temporall or Ecclesiasticall, any one takes to him and his heires, but all to him

and his successours; And therefore here you may see what a weak-course that is, *to put cases of Bishops and Parsons, and the like, and to apply them to the Crowne.* For the King takes to him and his heires in the manner of a naturall body, and the word successours is but superfluous, and where that is used that is ever duly placed after the words heires. *The King, his heires and Successours.*

Againe no man can deny but *uxor & filius sunt nomina naturæ.* A Corporation can have no wife; nor a Corporation can have no sonne; how is it then, that it is treason to compassse the death of the Queene, or of the Prince. There is no part of the body politique of the Crowne in either of them, but it is entirely in the King. So likewise we find in the case of the Lord *Barkley*, the question was whether the Statute of 35. *H. 8.* for that part which concerned Queene *Katherine Pars* joynture were a publique act or no, of which the Judges ought to take notice, not being pleaded: And judged a publique Act. So the like question came before your Lordship, my Lord *Chancellour*, in Serjeant *Heales* case: whether the Statute of 11. of *Ed. 3.* concerning the intayling of the Dukedome of *Cornwall* to the Prince were a publique Act or no; and ruled likewise a publique Act. Why? no man can affirme, but these be operations of Law, proceeding from the dignity of the naturall person of the King: for you shall never find that another Corporation whatsoever of a Bishop or Master of a Colledge, or Major of *London*, worketh any thing in Law upon the wife, or sonne of the Bishop or the Major. And to conclude this point and will all to come neere to

the case in question, I will shew you where the naturall person of the King hath not onely an operation in the case of his wife and children, but likewise in the case of his Subjects, which is the very question in hand: As for example, I put this case, can a *Scottishman* who is a Subject to the naturall person of the King, and not to the Crowne of *England*, can a *Scottishman*, I say, be an enemy by the Law to the Subjects of *England*, or must he not of necessity, if he should invade *England*, be a Rebelle, and no enemy not onely as to the King, but as to the Subject? Or can any Letters of Mart or reprisall be granted against a *Scottishman*, that should spoyle an *Englishmans* goods at Sea, and certainly this case doth presse exceeding neere the principall case, for it prooverth plainly, that the naturall person of the King, hath such a communication of qualities with his body politique; as it makes the Subjects of either Kingdomes stand in another degree of privity one towards the other; then they did before. And so much for the second proove.

For the five Acts of *Parliament* which I spoke of which are concluding to this question?

The first of them is, *that concerning the banishment of Hugh Spencer in the time of King Ed. 2.* In which act there is contained, the charge, and accusation whereupon his exile proceeded. One Article of which charge is set downe in these words. *Hemage and Oath of the Subject is more by reason of the Crowne, then by reason of the person of the King. So that if the King doth not guide himselfe by reason in right of the Crowne, his lieges are bound by their oath to the*

Crowne to remooove the King!

By which act doth plainly appeare the perilous consequence of this distinction concerning the person of the King, and the Crowne. And yet I doe acknowledge Justice, and ingenuously a great difference betweene that assertion and this, which is now maintained : for it is one thing to make things distinct, another thing to make them separable, *Aliud est distinctio, aliud separatio*, and therefore I assure my selfe, that those, that now use and urge that distinction doe as firmly hold, that the subjection to the Kings person, and to the Crowne, are inseparable, though distinct, as I doe. And it is true that the poyson of the opinion, & assertion of *Spencer* is like the poyson of a *Scorpion*, more in the taile then in the body : For it is the inference that they make which is, that the King may be deposed or removed, that is, *the treason and disloyalty of that opinion* : But by your leave the body is never a whit the more wholesome meate, for having such a tayle belonging to it : therefore we see that is *Locus lubricus*, an opinion from which a man may easily slide into an absurdity. But upon this act of Parliament, I will onely note one circumstance more, and so leave it, which may adde authority unto it in the opinion of the wisest, and that is, that these *Spencers*, were not ancient nobles or great Patriots that were charged and prosecuted by upstarts and favourites : for then that might be said that it was but the action of some flatterers, who use to extoll the power of Monarches to be infinite, but it was contrary ; a prosecution of those persons being favourites by the Nobility, so as the Nobility themselves which seldome doe sub-

subscribe to the opinion of an infinite power of Monarches. Yet even they could not endure, but their blood did rise to heare that opinion: that subjection is owing to the Crowne, rather then to the person of the King.

The second Act of Parliament which determined this case, is the act of recognition in the first yeare of his Majestie, wherein you shall find, that in two severall places, the one in the Preamble, the other in the body of the Act, the Parliament doth recognize, *that these two Realmes of England and Scotland are under one Imperiall Crowne.* The Parliament doth not say under one Monarchie or King which mought referre to the person, but under one Imperiall Crowne, which cannot be applyed but to the Sovereigne power of Regiment, comprehending both Kingdomes. And the third act of Parliament is the Act made in the fourth yeare of his Majesties Raigne for the abolition of hostile Lawes, wherein your Lordships shall find likewise in two places, that the Parliament doth acknowledge, that there is an union of these two Kingdomes already begun in his Majesties person. So as by the declaration of that act, they have not onely one King, but there is an union in inception in the Kingdomes themselves.

These two are Judgements in Parliament by way of declaration of Law, against which no man can speake. And certainly these are righteous and true Judgements to be relyed upon; not onely for the authority of them, but for the verity of them, for to any that shall well, and deeply weigh the effects of Law upon this conjunction; it cannot but

but appeare, that although *partes integrales* of the Kingdome (as the Philosophers speake) such as the Lawes, the Officers, the Parliament are not yet commixed ; yet neverthelesse there is but one, and the selfe-same fountaine of soveraigne power depending upon the ancient submission, whereof I spake in the beginning, and in that sense, the Crownes and the Kingdomes are truly said to be united.

And the force of this truth is such, that a grave and learned Gent. that defended the contrary opinion, did confesse thus farre : That in ancient times when Monarchies (as he said) were but heapes of people, without any exact forme of policy, that then Naturalization and communication of Priviledges did follow the person of the Monarch. But otherwise since States were reduced to a more exact forme : So as thus farre we did consent; but still I differ from him in this, that *those more exact formes wrought by time, and custome, and Lawes, are neverthelesse still upon the first foundation, and doe serve onely to perfect and corroborate the force and bond of the first submission, and in no sort to disanull or destroy it.*

And therefore with these two acts doe I likewise couple the Act of 14. Ed. 3. which hath beene alledged of the other side. For by collating of that Act with this former too, the truth of that we affirme will the more evidently appeare, according unto the rule of reason : *Opposita juxta se posita magis elucescunt.* That act of 14. is an act of separation. These two Acts formerly recited are Acts tending to union. This Act is an act that maketh a new Law, it is by the words of *grant* and *establissh*; these

two Acts declare the common law, as it is, being by words of *Recognition* and *Confession*.

And therefore upon the difference of these lawes you may substantially ground this position. That the *Common-law of England* upon the adjunction of any Kingdome unto the King of *England*, doth make some degree of union in the Crownes, and Kingdomes themselves : except by a speciall Act of *Parliament* they be dissevered.

Lastly, the 5. *Act of Parliament*, which I promised is the *Act* made in the 42. of *E.* 3. cap. 10. which is expresse decision of the point in question. The words are, *Item*, (upon the *Petition* put into *Parliament* by the *Commons*;) *That Infants borne beyond the Seas in the Seignories of Callice, and elsewhere within the lands and Seignories that pertain to our Sozeraign Lord the King beyond the Seas, bee as able and inheritable of their heritage in England, as other Infants borne within the Realme of England, it is accorded that the Common-law and the Statute formerly made be holden.*

Upon this Act, I inferre thus much, first that such as the *Petition* mentioneth, were naturalized, the practice shewes ; Then, if so, it must be either by *Common-law*, or *Statute* ; for so the words report, not by *Statute* ; for there is no other statute, but 25. of *E.* 3. and that extends to the case of birth out of the Kings obedience, where the Parents are *English*, Ergo it was by the *Common-law*, for that onely remaines. And so by the *Declarations* of this statute at the *Common-law*. *All Infants borne within the Lands and Seignories* (for I give you the

very words againe) *that pertaine to our Sovereigne Lord the King*, it is not said, as are the Dominions of England, *are as able and inheritable of their heritage in England, as other Infants borne within the Realme of England*: what can be more plaine? And so I leave Statutes, and goe to Presidents; for though the one doe bind more, yet the other sometimes doth satisfie more. For presidents in the producing & using of that kind of prooffe, of all others it behoveth them to be faithfully vouched; for the suppressing or keeping back of a circumstance may change the case, and therefore I am determined to urge only such presidents, as are without all colour or scruple of exception, or objection, even of those objections which I have, to my thinking, fully answered & confuted. This is now, by the Providence of God the fourth time that the line, and Kings of England have had Dominions & Seignories united unto them, as Patrimonies, and by descent of bloud; foure unions I say there have bin inclusive with this last. The first was of *Normandy* in the person of *William* commonly called the *Conqueror*. The 2^d. was of *Gascoyne*, and *Guienne*, and *Anjou* in the person of K. *Hen.* the 2^d. in his person I say, though by severall titles. The 3. was of the *Crowne of France*, in the person of K. *Edw.* the third. And the 4th. of the Kingdome of *Scotland* in his Majesty. Of these I will set aside such, as by any cavillation can be excepted unto. First, I will set aside *Normandy*, because it will be said, that the difference of countreyes accruing by conquest, from countreyes annexed by descent in matter of Communication of priviledges holdeth

holdeth both wayes, as well of the part of the conquering Kingdome, as the conquered. And therefore that although *Normandy* was not conquest of *England*, yet *England* was a conquest of *Normandy*, and so a communication of priviledges between them. Againe, set aside France, for that it will be said, that although the King had a title in bloud, and by descent, yet that title was executed and recovered by Armes : So as it is a mixt title of conquest & descent, and therefore the President not so cleare.

There remaines then *Gascoyne & Anjou*, and that president, likewise I will reduce and abridge to a time to avoid all question. For it will bee said of them also, that after they were lost and recovered in *ore gladii*, that the antient title of bloud was extinct & that the King was in upon his new title by conquest, & Mr. *Walter* had found a book case, in 13. of *H. 6.* abridged by Mr. *Fitz-Herbert*, in title of protection, *placito* 56. where a protection was cast, *quia profecturus in Gasconiam* with the Earle of *Huntingdon*, and challenged because it was not a voyage royall, & the Justices thereupon required the sight of the cōmission, which was brought before them, & purported power to pardon Felonies, & treason, power to coyn money, & power to conquer them that resist, wherby M. *Walter* finding the word *conquest*, collected that the Kings title at that time was reputed to bee by Conquest, wherein I may not omit to give *Obiter* that Answer, which Law and Truth provideth, namely that when any King obteyneth by warre a Countrey, whereunto he hath right by Birth, that hee is ever in upon his Antient Right, not upon his purchase by Conquest,

quest; and the Reason is, that there is as well a Judgement and recovery by Warre and Armes, as by law and course of Justice; for war is a tribunall seat, wherein God giveth the judgment, & the tryall is by battaile, or *Duell*, as in the case of tryall of private right, and then it followes, that whosoever commeth in by eviction, comes in his remitter: so as there will bee no difference in Countreyes wherof the right commeth by descent, whether the possession be obtained peaceably or by war, but yet neverthelesse, because I will utterly take away all manner of evasion, & subterfuge, I will yet set apart that part of time in and during, the which, the subjects of *Gascoyne & Guyenne* might bee thought to be subdued by a reconquest. And therefore I will not meddle with the *Prior of Shellies* case, though it be an excellent case; because it was in $\frac{1}{2}$ time, 27. of E. 3. neither will I meddle with any cases, records, or presidents, in the time of King H. 5. or King H. 6. for the same reason, but will hold my selfe to a portion of time, from the first uniting of these Provinces in the time of King H. 2. untill the time of K. *John*. At what time those Provinces were lost, and from that time againe unto the 17. yeere of the Reigne of K. *Edw.* 2. at what time the Statute of *prærogativa Regis* was made, which altered the law in the point in hand.

That both in these times, the Subjects of *Gascoyne* and *Guyenne*, and *Anjou*, were naturalized for inheritance in *England* by the lawes of *England*: I shall manifestly prove, and the prooffe proceeds, as to the former time (which is our case) in a very high degree, a *minore ad majus*, and as we say, a *multo fortio-*

re. For if this priviledge of naturalization remained unto them when the Countreyes were lost, and became subjects in possession to another King: much more did they enjoy it, as long as they continued under the Kings subjection.

Therefore to open the State of this point. After these Provinces were through the perturbations of the State in the infortunate time of K. *John* lost, and severed, the principall persons which did adhere unto the *French* were attainted of Treason, and their escheats here in *England* taken and seized. But the people that could not resist the tempest, when their Heads and Leaders were revolted, continued inheritable to their possessions in *England*, and reciprocally the people of *England* inherited and succeeded to their possessions in *Gascoyne*, and were both accounted, *ad fidem utriusque Regis*, untill the Statute of *Prærogativa Regis*, wherein the wisdom and justice of the *Law of England* is highly to be commended. For of this law, there are two grounds of reason, The one of equity, The other of policy. That of Equity was because the common people were in no fault, but as the Scripture saith in a like case, *quid fecerunt oves iste?* It was the cowardise and disloyalty of their Governours that deserved punishment, but what had these sheep done, and therefore to have punished them, and deprived them of their lands & fortunes had bin unjust. That of policy was, because if the law had forthwith upon the losse of the Countreyes by an accident of time pronounced the people for *Aliens*, it had been a kind of Cession of their right, and a disclaymer in them, and so a greater difficulty to recover them.

And therefore we see the Statute, which altered the law in this point, was made in the time of a weak king, that, as it seemed, despaired ever to recover his right, and therefore thought better to have a little present profit by escheats, then the continuance of his claime, and the countenance of his right by the admitting of them to enjoy their inheritances, as they did before.

The State therefore of this point, being thus opened, it resteth to prove our assertion that they were naturalized; for the clearing whereof, I shall need but to reade the authorities, they be so direct and pregnant. The first is the very text of the Statute of *Prærogativa Regis*. *Rex habebit escaetas de terris Normannorum cujusunque feodi fuerint, salvo servitio, quod pertinet ad capitales dominos feodi illius, & hoc similiter intelligendum est, si aliqua hereditas descendat alicui nato in partibus transmarinis, & cujus antecessores fuerunt ad fidem Regis Franciæ, ut tempore Regis Iohannis, & non ad fidem Regis Angliæ, sicut contigit de Baronia Monmouthæ, &c.*

By which Statute it appeares plainly that before the time of King Iohn, there was no colour of any Escheate, because they were the kings Subjects in possession, as Scotland now is, but onely it determines the Law, from that time forward.

This Statute if it had in it any obscurity, it is taken away by two lights, the one placed before it, and th'other placed after it, both authors of great credit, the one for antient, th'other for late times. The former is *Braddon* in his *Cap. de exceptionibus*, lib. 5. fol. 427. and his words are these, *Est etiam &*
alia

alia exceptio quæ tenenti competit ex persona petentis propter defectum Nationis, quæ dilatoria est, & non perimit actionem, ut si quis alienigena qui fuerit ad fidem Regis Franciæ, & actionem instituat versus aliquem qui fuerit ad fidem Regis Angliæ, tali non respondeatur saltem donec terræ fuerint communes.

By these words it appeareth, that after the losse of the Provinces beyond the Seas, the Naturalization of the Subjects of those Provinces was in no sort extinguished, but onely was in suspence during time of warre and no longer; for he saith plainly, that the exception which we call plea to the person of *Alien*, was not peremptory but onely dilatory, that is to say, during the time of war, and untill there were peace concluded, which hee tearmes by these words, *donec terræ fuerint communes*, which though the phrase seeme somewhat obscure is expounded by *Bracton* himselfe in his fourth booke, fol. 297. to be of peace made and concluded whereby the Inhabitants of *England*, and those Provinces might enjoy the profits and fruits of their lands in either place *communiter*, that is respectively, or as well the one as th'other: so as it is cleere, they were ~~no~~ *Aliens* in right, but onely interrupted and debarred of Suites in the Kings Courts in time of Warre.

The authority after the Statute, is, that of Master *Stamfords*, the best Expositor of a Statute & hath bin in our law, a man of reverend judgment, & excellent order in his writings, his words are in his exposition upon the branch of the Statute which we read before.

By this branch it should appeare, that at this time men of Normandy, Gascoyne, Guienne, Anjou, and Brittain were inheritable within this Realme, as well as English-men, because that they were sometimes Subjects to the Kings of England and under their Dominion, untill K. Johns time, as is aforesaid, & yet after his time, those men (saving such whose lands were taken away for treason) were still inheritable within this Realme, till the making of this Statute, and in the time of peate betweene the two Kings of England, and France, they were answerable within this Realme, if they had brought any action for their Lands and Tenements.

So as by these three authorities , every one so plainly pursuing th' other, we conclude that the subjects of Gascoyne, Guienne, Anjou, and the rest from their first union by descent , untill the making of the Statute, of *prærogativa Regis*, were inheritable in England, and to be answered in the Kings Courts in all actions, except it were in time of warre. Nay more (which is *de abundante*) that when the Provinces were lost, and disannexed, and that the King was but King *de jure* over them, and not *de facto* : Yet neverthelesse, the priviledge of naturalization continued.

There resteth yet one objection, rather plausible to a popular understanding, then any waies forcible in law, or learning, ^{wh}ch is a difference taken between the Kingdome of Scotland, and these Dutchies, for that the one is a Kingdome, and th' other was not so, and therefore that those Provinces being of an inferior

inferiour nature, did acknowledge our Lawes, and Seales, and Parliament which the Kingdome of *Scotland* doth not.

This difference was well given over by Mr. *Walter*, for it is plaine, that a Kingdome and absolute Dukedome, or any other Sovereigne estate doe differ *honore*, and not *poteſtate* ; For divers Dutchies, and Countries that are now, were sometimes Kingdomes ; and divers kingdomes that are now, were sometimes Dutchies, or of other inferiour Style, wherein we neede not travaile abroad since we have in our owne ſtate ſo notorious an inſtance of the Countrey of *Ireland*, whereof King *H. 8.* of late time was the firſt that writ himſelfe King the former Style being *L. of Ireland* and no more, and yet Kings had the ſame authority before, that they have had ſince and the ſame Nation the ſame marks of a Sovereigne State, as their *Parliaments*, their *Armes*, their *Coyes*, as they now have, ſo as this is too ſuperficiall an allegation labour upon.

And if any doe conceive, that *Gascoyne* and *Guyenne* were governed by the Lawes of *England*. Firſt, that cannot be in reaſon, for it is a true ground, that whereſoever any Princes Title unto any Countrey is by Law, he can never change the Lawes, for that they create his Title : and therefore no doubt thoſe Dutchies retained their owne Lawes, which if they did, then they could not be ſubject to the Lawes of *England*

And next againe the fact or practize was otherwise, as appeareth by all consent of *Story* and *Record*: For those Dutchies continued governed by the Civill Law, their tryalls by witnessles and not by Jurie, their lands Testamentary, and the like.

Now for the colours, that some have endeavoured to give, that they should have beene subordinate to the government of *England*, they were partly weake, and partly such as make strongly against them, for as to that, that writs of *Habeas corpus* under the great Seale of *England* have gone to *Gascoyne*, it is no manner of prooffe, for that the Kings writs which are mendatory and not writs of ordinary Justice may goe to his Subjects into any forraine parts whatsoever, and under what Seale it pleaseth him to use; and as to that, that some *Aas of Parliament* have beene cited, wherein the *Parliaments of England* have taken upon them to order matters of *Gascoyne*, if those Statutes be well looked into, nothing doth more plainly convince the contrary, for they intermeddle with nothing but that that concerneth either the *English* Subjects personally, or the territories of *England* locally, and never the Subjects of *Gascoyne*, for looke upon the Statute of 27. of Ed. 3. ca. 5. there it is said, *That there shall be no fore-stalling of wines*, but by whom? onely by *English* Merchants, not a word of the Subjects of *Gascoyne*, and yet no doubt they might be offenders in the same kind.

So in the sixt Chapter it is said, *That all Marchants, Gascoynes may safely bring wines into what part it shall please them, here now are the persons of Gascoynes, but then the place whether? into the Realme of England, and in the 7. Chap. that erects the Ports of Burdeaux and Bayonne, for the staple Townes of wine, the Statute ordaines that if any, but who? English Marchant or his Servants shall buy or bargain other where, his body shall be arrested by the Steward of Gascoyne, or the Constable of Burdeaux: true, for the Officers of England could not catch him in Gascoyne, but what shall become of him, shall he be proceeded with within Gascoyne? No, but he shall be sent over into England into the Tower of London.*

And this doth notably disclose the reason of that custome, which some have sought to wrest the other way, that custome, I say, whereof a forme doth yet remaine, that in every Parliament the King doth appoint certaine Committees in the Upper-House to receive the Petitions of *Normandy, Guyenne* and the rest, which as by the former Statute doth appeare could not be for the ordering of the governments there, but for the liberties, and good usage of the Subjects of those parts, when they came hither, or *via versa*, for the restraining of the abuses and misdemeanors of our Subjects when they went thither.

Wherefore I am now at an end. For us to speake of the mischiefes, I hold it not fit for this place,

lest we should seeme to bend the Lawes to policy and not to take them in their true and naturall sense. It is enough that every man knowes, that it is true of these two Kingdomes, which a good Father said of the Churches of Christ: *Si inseparabiles insuperabiles*. Some things I may have forgot, and some things perhaps I may forget willingly; for I will not presse any opinion or declaration of late time which may prejudice the liberty of this debate, but *ex dictis, & ex non dictis*, upon the whole matter I prove Judgement for the Plaintiffe.



A SPEECH VSED

by *St Francis Bacon* in the Honou-
 rable House of Commons, *quinto*
Iacobi, concerning the Article of
Naturallization of the *Sco-*
tish Nation.



T may please you (Master Speaker) preface will I use none, but put my selfe upon your good opinions, to which I have been accustomed beyond my deservings, neither will I hold you in suspence, what way I will chuse, but now at the first declare my selfe, that I mean to counsell the House to Naturallize this Nation, wherein neverthelesse I have a request unto you, which is of more efficacy to the purpose I have in hand, than all that I shall say afterwards : And it is the same request, which *Demosthenes* did more than once, in great causes of estate, make to the people of *Athens*, That when they took into their hands the Balls, whereby to give their voices (according as the manner of them was) they would raise their thoughts, and lay aside those considerations, which

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their

their private vacations and degrees might minister and represent unto them, and would take upon them, cogitations and mindes agreeable to the dignity and honour of the estate.

For (Master Speaker) as it was aptly and sharply said by *Alexander* to *Parmenio*, when upon their recitall of the great offers which *Darius* made, *Parmenio* said unto him, I would accept these offers, were I as *Alexander*, he turned it upon him again, so would I (saith he) were I as *Parmenio*, so in this caause: if an honest *English* merchant (I do not single out that State in disgrace, for this Island ever held it honourable, but onely for an instance of private profession). If an *English* merchant should say, surely I would proceed no further in the union, were I as the King, it might be reasonably answered, no more would the King, were he as an *English* merchant: and the like may be said of a Gentleman in the countrey, be he never so worthy or sufficient, or of a Lawyer be he never so wise or learned, or of any other particular condition in this Kingdome; for certainly, Master Speaker, if a man shall be onely or chiefly sensible of those respects which his particular affection, and degree shall suggest, and infuse into him, and not enter into true and worthy considerations of estate, he shall never be able aright to give counsell, or take counsell in this matter, for that if this request be granted, I account the cause obtained.

But to proceed to the matter it selfe; all consultations do rest upon questions comparative,
for

for when a question is *de vero*, it is simple, for there is but one truth, but when a question is *de bono*, it is for the most part comparative, for there be differing degrees of good and evil, and the best of the good is to be preferred and chosen, and the worst of the evil is to be declined and avoided, and therefore in questions of this nature, you may not look for answer, proper to every inconvenience alleadged, for somewhat that cannot be specially answered, may nevertheless be encountered, and overweighed by matter of greater moment, and therefore, for the matter which I shall set forth unto you, will naturally receive the distribution of three parts.

First, an answer to these inconveniences which have been alleadged to ensue, if we should give way to this Naturalization, which I suppose you will not finde to be, which I suppose will not be so great, as they have been made, but that much droffe is put into the ballance, to helpe to make weight.

The answer to the inconveniences objected concerning the Naturalization.

Secondly, an encounter against the remainder of these inconveniences, which cannot properly be answered, by much greater inconveniences, which we shall incurre, if we do not proceed to this Naturalization.

Thirdly, an encounter likewise, but of another nature, that is by the gain and benefit, which we shall draw and purchase to our selves by proceeding to this Naturalization. And yet to avoid confusion, which ever followeth of too much generality, it is necessary for me (before I proceed to

perswasion) to use some distribution of the points or parts of Naturalization, which certainly can be no better, or none other, than the ancient distinction of *Ius Civitatis, jus suffragii vel tribus, jus petitionis sive honoris*: for all ability and capacity is either of private interest, of *Meum & Tuum*, or of publike service, and the publike consisteth chiefly either in voice or in office, now it is the first of these (Master Speaker) that I will onely handle at this time, and in this place, and referre the other two for a Committee, because they receive more distinction and restriction.

To come to the inconveniencies alleaged on the other part, the first of them is, that there may ensue of this Naturalization, a surcharge of people upon this Realme of *England*, which is supposed already, to have the full charge and contentment, and therefore there cannot be an admission of the adoptive, without a dismission of the former times, and conditions of all those, that are native subjects of this Realme. A grave objection, (Master Speaker) and very dutifull, for it proceeds not, of any unkindnesse to the *Scottish* Nation, but of a naturall fastnesse to our selves, for that answer of the Virgins, *Ne forte non sufficiat vobis & nobis*, proceeds not out of any envy, or maligne humour, but out of providence, and the originall charity, which begins with our selves, and I must confesse (M. Speaker) that as the Gentleman said, when *Abraham* and *Lot*, in regard of the greatnesse of their Families, grew pent and straitned; It is true, that though they were brethren, they grew to difference

rence, and to those words, *Vadete ad dexteram, & ego ad sinistram*; But certainly, I should never have brought that example on that side, for we see what followed of it, how this separation *Ad dexteram & ad sinistram*, caused the miserable captivity of the one brother, and the dangerous though prosperous war of the other, for his rescue and recovery.

But to this objection, (Master Speaker) being so weighty, and so principall, I mean to give three severall answers, every one of them being to my understanding by it selfe sufficient.

The first is, that the opinion, of the number of the *Scotish* Nation, that should be likely to plant themselves here amongst us, will be found to be a thing, rather in conceit than event, for (Master Speaker) you shall find these plausible similitudes of a tree, that will thrive the better, if it be removed into the more fruitfull soil, and of sheep or cattell, that if they finde a gap or passage open, will leave the more barren pasture, and get into the more rich and plentifull, to bee but arguments meerly superficiall, & to have no sound resemblance, with the transplanting or transferring of families; for the tree we know by nature, as soon as it is set in the better ground, can fasten upon it, and take nutriment from it, and a sheep as soon as he gets into the better pasture, what should let him to graze or feed? but there belongeth more I take it, to a family or particular person, that shall remove from one Nation to another, for if (Master Speaker) they have not stocke, meanes, acquaintance,

The opinion
of the num-
ber of the
Scotish Na-
tion.

Conjecturall
experience,

and custome, habitation, trades, countenance, and the like, I hope you doubt not, but they will starve in the midst of the rich pasture, and are farre enough from grazing at their pleasure, and therefore in this point, which is conjecturall, experience is the best guide for the time past, is a patern of the time to come, I think no man doubteth (Master Speaker) but his Majesties first coming in, was the greatest spring-tide for the confluence, and enterance of that Nation.

Now I would faine understand in these four yeers space, and the fulnesse, and strength of the Court and Tide, how many families of the Scotch men, are planted in the Cities, Burroughs, and Townes of this Kingdome, for I do assure my selfe, then more then some persons of quality, about his Majesties person here at Court and in *London*, and some other inferiour persons, that have a dependance upon them, the returne and certificate, if such a Survey should be made, would be of a number extreamly small, I report me to all your private knowledges of the places where you inhabite.

Now (Master Speaker) as I said, *Si in ligno viridi ita fit, quid fiet in arido?* I am sure there will be no more such spring-tides; but you will tell me of a multitude of families of the *Scotish* nation in *Polonia*, and if they multiply in a Countrey so farre, how much more at hand, for that (Master Speaker) you must impute it of necessity to some speciall accident of time and place that drawes them thither: for you see plainly before your eyes, that in *Geneva*, which is much neerer, where in

France

France they are invited with privileges, and with the very privilege of Naturalization, yet no such number can be found, so as it cannot either be nearness of place, or privilege of person that is the cause. But shall I tell you, (Master Speaker) what I thinke; In all the places of the world, neer or farre off, they will never take that course of life in this Kingdome, which they content themselves with in *Poland*; for we see it to be the nature of all men that will rather discover poverty abroad than at home; There is never a Gentleman, that hath over-reached himselfe in expences, and thereby must abate his countenance, but he will rather travell, and do it abroad than at home, and we know well they have good high stomacks, and have ever stood in some tearmes of emulation, and therefore they will never live here except they can live in good fashion, so as I assure you, Master Speaker, I am of opinion, that the first which we now have, to admit them, will have like as that contention had between the Nobility and people of *Rome*, for admitting of a *Plebeian* Common-wealth, whilest it was in passage it was very vehement, and mightily stood upon, and when the people had obtained it, they never made any *Plebeian Consul*, not in 60. yeers after, and so will this be for many yeers, as I am perswaded, rather a matter in opinion and reputation, than in effect, and this is the first answer, that I give to this main inconvenience pretended of surcharge of people.

The second answer, which I give to this objection is this, I must have leave to doubt, Master *England not*
peopled to
the full,
 Speak-

Speaker, that this Realme of *England* is not peopled to the full, for certain it is, that the territories of *France, Italy, Flanders,* & some part of *Germany*, do in equall space of ground, bear and contain a farre greater quantity of people, if they were mustered by the Poll, neither can I see, that this Kingdome is so much inferior, unto those forreigne parts in fruitfulnessse, as it is in population, which makes me conceive we have not our full charge; besides, I do see manifestly amongst us, the badges and tokens, rather of scarcenessse, than of presse of people, as drowned grounds, Commons, Wastes, and the like, which is a plain demonstration, that howsoever there may be an overswelling throng and presse of people here about *London*, which is most in our eye, yet the body of the Kingdome is but thin sowne with people, and whosoever shall compare the ruines and decayes of ancient Townes in this Realme, with the erectments and augmentations of new, cannot but judge that this Realme hath been farre better peopled in former times, it may be in the *Heptarchie*, or otherwise generally the rule holdeth, The smaller the State the greater the population *Pro rato*, And whether this be true or no, we need not seek further, than to call to our remembrance, how many of us serve here in this place, for desolate and decayed Burroughs.

Mediterrane, not
Maritime
Countries
furcharged
with people,

Again, Master Speaker, whosoever looketh into the principle of estate, must hold, that it is the *Mediterrane* countries, and not the *Maritime* which need to fear furcharge of people; for all sea-provinces

vinces and especially Ilands have another element besides the earth and soil, for their sustentation; what an infinite of people are, and may be sustained by fishing, carriage by sea, and merchandizing, wherein I do again discover, that we are not all prickt by the multitude of people, for if we were, it were not possible, we should relinquish and resigne such an infinite benefit of fishing, to the *Flemming*, as it is well knowne we do, and therefore I see, that we have wastes by sea, as well as by land, which still is an infallible argument that our industry is not awakened, to seek maintenance to any our great charge and presse of people. And lastly, (Master Speaker) there was never any Kingdom in this world, had I thinke, so fair and happy meanes to issue and discharge the multitude of their people, as this Kingdom hath, in regard of that desolate and wasted Kingdom of *Ireland*, which being a countrey blessed with almost all the dowries of nature, as rivers, havens, woods, quarries, good soil, and temperate climate, and now at last blest under his Majesty also with obedience, doth as it were continually call unto us, for our colonies and plantations, and so I conclude my second answer, to this pretended inconvenience of surcharge of people.

The third answer (Master Speaker) which I give is this, I demand what is the worst effect that can follow of your surcharge of people, look into it and you shall finde it none other than some honorable war, for the enlargement of their borders, which finde themselves pent upon forreigne parts,

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with

with inconveniences, which in a warlike Nation, I know not whether I should terme an inconvenience or no, for the saying is most true, though in another sense, *Omne solum foris patria*. It was spoken of the patience of an exiled man, but it is no lesse true in the valour of a warlike Nation, and certainly (Master Speaker) I hope I may speak it without offence, that whensoever we should hold our selves worthy, and whensoever just cause should be given, either to recover our antient rights, or to revenge our late wrongs, or to attain the honour of our ancestours, or to enlarge the patrimony of our posterities, we would never in this manner forget the considerations of amplitude and greatness, and fall at variance about profit and reckonings, fitter a great deal for private persons, than for Parliaments, and Kingdomes, and thus (Master Speaker) I leave this first objection, to such satisfactions as you have heard of.

The fundamentall
Laws of England
and Scotland
are divers
and severall.

The second objection is, that the fundamentall lawes of these Kingdomes, of *England* and *Scotland*, are yet diverse and severall, nay more that it is declared by the instrument, that they shall so continue; and that there is no intent in his Majesty to make innovation in them, and therefore that it should not be seasonable, to proceed to this Naturalization, whereby to endow them with our rights, and privileges, except they should likewise receive, and submit themselves to our lawes, and this objection likewise (Master Speaker) I allow to be a weighty objection and worthy to be well answered, and discussed.

The

The answer which I shall offer is this, It is true for mine owne part (Master Speaker) that I wish the *Scottish* Nation governd by our Lawes, for I hold our Lawes, with some reducement, worthy to governe, and it were the world, but this is that which I say, and I desire therein your attention, That according to true reason of estate, Naturalization is in order first and precedent to union of Lawes, and in nature separable, and in degree a lesse matter, and not inseparable from union of Lawes, for Naturalization doth but take out the markes of a Forreigner, but union of Laws makes them intirely as our selves, Naturalization taketh away separation. but union of Lawes doth take away distinction: do we not see, Master Speaker, that in the administration of the World under the great Monarch God himselfe, that his Lawes are diverse, one Law in spirits, another in bodies, one Law in Regions Coelestiall, another in Elementary, and yet the Creatures are all one masse or lumpe, without any *vacuum* or separation, do we not likewise see in the state of the Church, that amongst all people, of all Languages, and Linages, there is Communion of Saints, and that we are all fellow-citizens, and Naturalizants of the heavenly *Ierusalem*, and yet neverthelesse, divers Ecclesiasticall Lawes, Policies and Hierarchies, according to the speech of that worthy Father, *In veste varietas sit, scissura non sit*, and these certainly (Master Speaker) as they are the bonds of love, they are the more speciall and private bond, and the bond of Naturalization, the more common and geneall, for the

The answer
to the second
objection.

Poynings
lawes.

Lawes are rather *Figura Reipublica*, than *forma*, and rather bonds of perfection, than bonds of entirenesse, and therefore we see in the experience of our owne government, that in the Kingdome of *Ireland*, all our Statutes and Lawes, since *Poynings* Lawes, are not in force, and yet we deny them not the benefit of Naturalization, in *Gersey* and *Iernsey* and the Isle of *Man*, our common Lawes are not in force, and yet they have the benefit of Naturalization, neither need any man doubt, but that our Lawes and customes must in small time gather and win upon theirs, for here is the seat of the Kingdome, whence come the supream directions of estate, here is the Kings person and example, of which the verse saith, *Regis ad exemplum totius componitur orbis*. And therefore it is not possible, although not by solemne and formall acts of estates, yet by the secret operation of no long time, but they will come under the yooke of our Lawes, *Dulcis tractus pari jugo*, and this is the answer I give to the second objection.

Inequality in
the fortunes
between
England and
Scotland.

The third objection, is some inequality, in the fortunes of these two Nations, *England* and *Scotland*, by the commixture whereof, there may ensue advantage to them, and losse to us, wherein (Master Speaker) it is well that this difference or disparity consisteth, but in the externall goods of fortune, for indeed it must be confessed that for the goods of the minde and body they are *alteri nos*, or our selves, for to do them but right, we know in their capacities and understandings, they are a people ingenious, in labour industrious, in courage valiant,

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inbody hard, active, and comely, more might be said, but in commending them, we do but in effect, commend our selves, for they are of one part, and continent with us, and the truth is, we are participant, both of their vertue, and vices, for if they have been noted, to be a people not so tractable in government, we cannot without flattering our selves, free our selves altogether from that fault, being indeed incident to all martiall people, as we see it evident by the example of the Romans, and others, even like unto fierce horses, that though they be of better service than others, yet they are harder to guide and manage.

But for this objection (Master Speaker) I purpose to answer it, not by the authority of Scriptures, which saith, *Beatius est dare quàm accipere*, but an authority, framed and derived from the judgement of our selves, and our ancestors in the same case; as to the point, for (Master Speaker) in all the lives of our Kings, none useth to carry greater commendation than his Majesties noble progenitor King *Edward* the first of that name; and amongst his other commendations, both of war and policy, none is more celebrated, than his purpose and enterprize, for that conquest of *Scotland*, as not bending his designs, to glorious conquests abroad, but to solid strength at home, which nevertheles if it had succeeded, could not but have brought in all these inconveniences, of the com-
 mixture of a more opulent Kingdom, with a lesse,
 that are now alleged, for it is not the yoake, either
 of our Lawes or Armes, that can alter the nature

Lawes nor
 Armes can
 not alter the
 nature of cli-
 mates.

of the climate, or the nature of the soil, neither is it the manner of the commixture, that can alter the nature of commixture, and therefore (Master Speaker) if it were good for us, then it is good for us now, and not to be prized the lesser, because we payed not so dear for it. But a more full objection, I referre over to that, which will come after, to be spoken touching surety, and greatnesse.

The fourth objection (Master Speaker) is not properly an objection, but rather a preoccupation of an objection, of the other side, for it may be said, and very materially, whereabouts we do contend, the benefit of Naturalization is by the Law, in as many as have been, or shall be borne, since his Majesties comming to the Crowne, already settled and invested, there is no more then, but to bring the *Ante-nati*, into the degree of the *Post-nati*, that men growne, that have well deserved, may be in no worse case, than children which have not deserved, and elder brothers in no worse case, than younger brothers, so as we stand upon *quiddam, non quantum*, being but a little difference of time, of one generation from another, to this (Master Speaker) it is said by some, that the Law is not so, but that the *Post-nati* are aliens as the rest. A point that I mean not much to argue, both because it hath been well spoken, by the gentleman that spoke last before me, and because I do desire in this case, and in this place, to speak rather of conveniency, than of Law, onely this I will say, that, that opinion seemes to me contrary to opinion of Law, and contrary to authority, and experience of Law; for reason

son of Law, when I meditate of it, me thinkes the wisdom of the Common Lawes of *England* well observed, is admirable in the distribution of the benefit and protection of the Lawes, according to the severall conditions of persons in an excellent proportion, the degrees are four, but bipartite; two of Aliens, and two of Subjects.

The first degree is of an alien borne under a King, or State, that is enemy, if such an one come into this Kingdom without safe conduct, it is at his perill, the law giveth him no protection, neither for body, lands, nor goods, so as if he be slain, there is no remedy by any appeal at the parties suit, although the party were an *English* woman, marry at the Kings suit, the case may be otherwise in regard of the offence, to the peace, and Crowne.

The first degree of an alien.

The second degree is of an alien that is borne under the faith and allegiance of a King or State, that is a friend unto such a person, the Law doth impart a great benefit and protection that is concerning things personall, transitory and moveable, as goods and chattels, contracts and the like, but not concerning freehold and inheritance, and the reason is because he may be an enemy, though he be not; for the State under the obedience of which he is may enter into quarrell, and hostility, and therefore as the Law, hath but a transitory assurance of him, so it rewards him, but with transitory benefits.

The second degree of an alien borne under a State, that is a friend.

The third degree is of a subject who having been an alien is by charter and denization, to such an one the Law doth impart yet a more ample benefit, for it gives him power to purchase freehold and inheritance to his owne use, and likewise to enable those children,

The third degree of an alien subject.

children, borne after his denization to inherit, but nevertheſſe he cannot make title, or convey pedigree from any anceſtours paramount, for the Law thinks not good to make him in the ſame degree, with a ſubject borne, becauſe he was once an alien, and ſo might once have been an enemy, *Et nemo ſubito fingitur*, affections cannot be ſetled by any benefit, as when from their Nativity, they are inbred, and inherent.

The fourth
degree the
perfect de-
gree,

And the fourth degree, which is the perfect degree, is of ſuch a perſon, as neither is enemy, nor can be enemy in time to come, nor would have been enemy in time paſt, nor can be enemy in time to come, therefore the Law gives unto him, the full benefit of Naturalization.

Now (Maſter Speaker) if theſe be true ſteps and paces of the Law, no man can deny, but whoſoever is borne under the Kings obedience never could *In aliquo puncto temporis* be an enemy, and therefore in reaſon of Law, is naturall. Nay, contrariwiſe, he is bound *jure nativitatſ* to defend this Kingdome of *England*, againſt all Innovators and Rebels, and therefore as he is obliged to the protection of aliens, and that perpetually, and univerſally, ſo he is to have that perpetuall and univerſall benefit and protection of Lawes which is Naturalization.

For forme of pleading it is true that hath been ſaid, that if a man would pleade another to be an alien, he muſt not onely ſet forth negatively, and primitively, that he was borne out of the obedience of our Sovereigne Lord the King, but affirmatively, under the obedience of a forreigne King or State, in particular, which can never be done in this caſe.

As for authoritie, I will not presse it, you know all what hath beene published by the Kings Proclamation, and for experience of Lawes, we see it in the subjects of *Ireland*, in the subjects of *Gernsey*, and *Jernsey*, parcells of the Dutchie of *Normandy*, in the Subjects of *Callis*, when it was *English*, which was parcell of the Crowne of *France*. But as I said, I am not willing to enter into an argument of Law, but to hold my selfe to poynt of conveniencie, so as for my part, I hold all, *Naturales ipso jure*, But yet I am farre from opinion, that it should be a thing superfluous to have it done by.

Chiefely in respect of that true principall of State *Principum actiones ad famam sunt Componende*. It will lift up a signe to all the World, of our Loves towards them, and good agreement with them, and these are (Mr. Speaker, the materiall objections, which have beene on the other side, whereunto you have heard my answers, weigh them in your wisdomes, and so I conclude that generall part.

Now (Mr. Speaker) according as I promised, I must fill the other ballance in expressing unto you the inconvenience, which we shall incurre, if wee shall not proceed to this Naturalization, wherein that convenience above all others, and alone by it selfe, if there were none other, doth exceedingly move me, and may move you, is a position of estate, collected out of the Records of time, which is this, That whatsoever severall Kingdoms or estates, have beene united in Soveraigntie, if that union hath not beene fortified, and bound in with a further union, and namely that which is now in question

(of Naturalization) this hath followed, that at one time or other they have broken, being upon all occasions apt to relaps and revolt to the former separation.

The union
between
the Ro-
mans and
the La-
tins.

Of this assertion, the first example which I will set before you, is of the memorable Union, which was betweene the Romans and the Latins, which continued from the Battaille at the Lake of *Regilla*, for many yeares unto the Consulship of C.

* 169
years af-
ter that
battell.
There are
extant at
this day
Coyns or
Medalles,
in memo-
rie of a
battell
fought by
this C.
Plautius
at *Priver-*
num.

* *Plautius*, and *L. Æmilius Mamercus*.

At what time, there began about this very poynt of Naturalization, that warre which was called *Bellum Sociale*, being the most bloody and pernicious warre that ever the Roman state endured, wherein after numbers of battailles, and infinite sieges and surprizes of Townes, the Romans in the end prevailed, and mastered the Latins: And ever as they held the honour of the warre, so looking back into what perdition and confusion they were neare to have beene brought, they presently Naturalized them all: you speake of a Naturalization in blood, there was a naturalization indeed in blood.

Sparta &
Pa'opo-
nesus.

Let mee set before you againe the example of *Sparta*, and the rest of the *Peloponnesus* their associates. The State of *Sparta* was a nice and jealous state of this poynt of imparting Naturalization to their confederates. But what was the issue of it? after they held them in a kinde of societie and amitie for divers years, upon the first occasion given, wch was no more than the surprisall of the Castle of *Thebes*, by certaine desperate conspirators in the habite of Masters, there insued immediately a generall revolt,

volt and defection of their associates, which was the ruine of their state, never after to bee recovered.

Of later times, let me lead your considerations, to behold the like events in the Kingdome of *Arragon*, which Kingdome was united with *Castile*, and the rest of *Spain*, in the persons of *Ferdinando*, and *Isabella*, and so continued many yeares; but yet so as it stood a Kingdome severed and divided from the rest of *Spain* in priviledges, and directly in this poynt of Naturalization, or capacitie of inheritance, what came of this; thus much, that now of fresh memorie, not past twelve yeares since, onely upon the voyce of a condemned man, out of the grate of a prison, towards the street, that cryed, which is as much as Liberties or Priviledges, there was raised a dangerous rebellion, which was suppressed with difficulty, with an Armie Royall, and their priviledges disannulled, and they incorporated, with the rest of *Spain*, upon so small a spark, notwithstanding so long continuance, were ready to break and sever againe.

The like may be said of the State of *Florence* and *Pisa*, which Citie of *Pisa* being united unto *Florence*, but not endued with the benefit of Naturalization, upon the first sight of forraine assistance, by the expedition of *Charles* the eighth of *France* into *Italy*, did revolt, though it bee since againe reunited and incorporated.

The same effect we see in the most barbarous government, which shewes it the rather to be an effect of nature; for it was thought a fit policie by the

The uni-
on of the
Kingdom
of Arra-
gon.

Florence
and Pisa.

Charles
the 8.

The like
effects in
barbarous
govern-
ments.

Councell of *Constantinople*, to retaine the Provinces of *Transylvania*, *Valachia*, and *Moldavia*, which were as the nurses of *Constantinople*, in respect of their provisions, to the end they might be the lesse wasted, onely under *Vayvods*, as Vassalls and *Homagers*, and not under *Rashaws*, as Provinces of the Turkish Emprie, which policie wee see by late experience proved unfortunate, as appeared by the revolt of the same three Provinces, under the Armies and Conduct of *Sigismond* Prince of *Transylvania*, a leader verie famous for a time, which revolt is not yet fully recovered, whereas wee seldom or never heare of revolts of Provinces incorporate to the Turkish Empire.

Naturalization a
sure bond.

On the other part (Mr. Speaker) because it is true which the Logicians say, *Opposita juxta se posita magis*: Let us take a view, and we shal find that where-soever Kingdomes and States have beene united, and that union incorroberate, by the bond of Naturalization mutually, you shall never observe them after ward upon any occasion of trouble or otherwise, to breake and sever againe, as wee see most evidently before our eyes, in our Provinces of *France*, that is to say *Guyen*, Province, *Normandy*, *Britain*, which not withstanding the infinite insisting troubles of that Kingdome, never offered to breake againe.

Wee see the like effect in all the Ringdomes of *Spain*, which are mutually naturalized, as *Leon*, *Castile*, *Valentia*, *Andaluzia*, *Granada*, and the rest, except *Arragon*, which held the contrarie course, and therefore had the contrary successe, as it was said

saide of *Portugall*, of which there is not yet sufficient tryall: and lastly, wee see the like effect in our owne Nation, which never rent assunder after it was united; so as we now scarce know whether the Heptarchy were a storie or a Fable; and therefore *Mr. Speaker*) when I revolve with my selfe, these Examples and others, so lively expressing the necessity of a Naturalization to avoyd a relaps into a separation, and doe here see many arguments and scruples on the other side, it makes me thinke on the old Bishop, which upon a publick disputation of certaine Christian Divines, with some learned men of the Heathen, did extreemly presse to bee heard, and they were loath to suffer him, because they knew hee was unlearned, though otherwise an holy and well-meaning man: But at last, with much adoe he got to be heard, and when he came to speake, in stead of using Argument, he did onely say over his Beliefe, but did it with such assurance and constancie, that it did strike the mindes of those that heard him, more than any argument had done; and so (*Mr. Speaker*) against all these witty and subtile Arguments, I say I doe believe, and I would bee sorry to be found a Prophet in it, that except we proceed with this Naturalization, though not perhaps in his Majesties time, who hath such interest in both nations, yet in the meane time of his Discendants, these Realmes will bee in continuall danger, to divide and break againe, now if any man bee of that carelesse mind, *Maneat nostras, ea cura nepotes.*

England
never se-
vered af-
ter once
united.

Or of that hard mind to leave things to be tried

by the sharpest sword : Sure I am hee is not of St. Pauls opinion, who affirmeth, that whosoever useth not fore-sight and provision for his family, is worse than an unbeliever, much more if wee shall not use fore-sight for these two Kingdomes, that comprehend in them so many families, but leave things open to the perill of future divisions : and thus have I expressed unto you what inconveniences of all others sinke deepest with mee, as the most weightie : neither doth there want other inconveniences, (*Mr. Speaker*) the effects and influence whereof, I feare will not be adjourned to so long a day as this that I have spoken of : But I leave it to your considerations and wisdomes, to consider whether you doe not thinke, in case by the denyall of this Naturalization, any Pike, alienation, or unkindnesse, I doe not say should bee, but should bee thought to bee, or noysed to bee betweene these two Nations, whether it will not quicken or excite all the envious and malicious humours, wheresoever (which are now covered) against us, either forraign or at home ; and so open the way to practice, and other Engines, and machinations, to the disturbance of this State. As for that other inconvenience, it is too binding, and too pressing to bee spoken of, and may doe better a great deale in your mindes than in my mouth, or the mouth of any man else, because as I have said, it doth presse our libertie too farre, and therefore (*Mr. Speaker*) I come to this third generall part of my division, concerning the benefit which we shall purchase by knitting this knot surer and straiter betweene these two Kingdomes,

Abinding
inconve-
nience.

domes, by the communicating of Naturalization.

The benefits may appeare to be two, the one suretie, the other greatnesse: touching suretie, (Mr. *Speaker*) it was well said by *Titus Quintus* the Roman, touching the State of *Peloponnesus*, that the Tortoise is safe within her shell, *Testudo inter tegmen tuta est*, but if there be any parts that lye open, they endanger all the rest: we know well, that although the State at this time be in a happy peace, yet for the time past, the more ancient enemy is the French, and the more late the Spaniard, and both these had as it were their severall posterne gates, whereby they might have approach and entrance to annoy us: *France* had *Scotland*, and *Spain* had *Ireland*; for these were but the two accesses which did comfort and encourage both these enemies to assaile and trouble us: wee see, that of *Scotland* is cut off by the union of these two Kingdomes, if that it shall be made constant and permanent; that of *Ireland* is cut off likewise by the convenient situation of the North of *Scotland*, towards the North of *Ireland*, where the fore was, which wee see being suddenly closed by means of this salve, so that as now there are no parts of the State exposed to danger to be a temptation to the ambition of Forrainers, but their approaches and avenues are taken away: for I doe little doubt, but these Forrainers, which had so little successe, when they had those advantages, will have much lesse comfort now that they be taken from them: and so much for suretie.

For greatnesse, (Mr. *Speaker*) I think a man may speake it soberly, and without braverie, that this Kingdome

The benefit of Suretie.

The benefit of greatnes.

Kingdome of *England*, having *Scotland* united; *Ireland* reduced, the Sea Provinces of the Low Countries contracted, and shipping maintained, is one of the greatest Monarchies, in forces truly esteemed, that hath bin in the world; for certainly the Kingdomes here on earth, have a resemblance with the Kingdome of Heaven, which our Saviour compareth not to any great Kinnell or Nut, but to a verie small graine, yet such an one as is apt to grow and spread, and such doe I take to bee the constitution of this Kingdome; if indeed our Countrie be referred to greatnesse and power, and not quenched too much with the consideration of utilitie and wealth, for (Mr. *Speaker*) was it not thinke you a true answer that *Solon* of *Greece* made to rich King *Cresus* of *Lydia*, when he shewed unto him a great quantitie of Gold, that he had gathered together in ostentation of his greatnesse and might; but *Solon* said to him contrary to his expectation; why Sir, if another come that hath better Iron than you, hee will be Lord of all your Gold: neither is the authorite of *Machiavel* to be despised, who scorneth that Proverb of State, taken first from a Speech of *Mucianus*, that monies are the sinewes of warres, and saith, there are no true sinewes of warres, but the verie Armes of valiant men.

The beginning of Monarchies founded

Nay more, (Mr. *Speaker*) whosoever shall looke into the seminarie, and beginning of the Monarchy of the word, he shall find them founded in poverty.

Persia a Countrie barren and poore in respect of *Media* whom they reduced.

Macedon, a Kingdom ignoble, and marcenarie, until *Philip* the son of *Amintas*. *Rome*

Rome had poore and pastorall beginning.

Rome.

The *Turks* a band of *Sarmathian Scithes*, that in a vagabond manner made impressiō upon that part of *Asia* which is called *Turcomania*, out of which, after much varieties of fortune, sprung the *Othoman* family now the terrour of the World.

The
Turks.

So we know the *Gothes*, *Vandalls*, *Alans*, *Huns*, *Lombards*, *Normans*, and the rest of the Northern people, in one age of the World, made their descent and expedition upon the Roman Empire, and came not as rovers to carry away prey and be gone againe, but planted themselves in a number of rich and fruitfull Provinces, where not onely their generations, but their names remaine to this day, witnesse *Lombardy*, *Catalonia*, a name compounded of *Goth* and *Alan*, *Andaluzia*, a name corrupted from *Vandalitia*, *Hungaria*, *Normandy*, and others.

Nay the fortune of the *Swisses* of late yeares, which are bred in a barren and mountainous Countrey, is not to be forgotten, who first ruined the Duke of *Burgundy*, the same who had almost ruined the Kingdome of *France*, what time after the battell neere *Granson*, the rich Jewell of *Burgundy*, prized at many thousands, was sold for a few pence, by a common *Swisse*, that knew no more what a jewell meant, then did *Æsops* Cock; and againe, the same Nation in revenge of a scorn was the ruine of the French Kings affaires in *Italy*, *Lewis* the 12. for that King, when he was pressed somewhat rudely by an agent of the *Swissers*, to raise their pensions, brake into words of choler, what

The Swit-
zers.

L

(saith he)

he) will these villaines of the mountaine put a raske upon me? which words lost him his Dutchy of *Mil-lain*, and chased him out of *Italy*.

All which examples (Mr. Speaker) do well prove *Solons* opinion, of the authoritie and Majestie that Iron hath over Gold, and therefore if I shall speake unto you mine owne hearr, me thinks we should a little disdaine, that the Nation of *Spain*, which howsoever of late it hath begun to rule, yet of ancient time, served many ages, first under *Carthage*, then under *Rome*, after under *Sarazens*, *Goths*, and others, should of late yeares take unto them that Spirit, as to dreame of a Monarchy in the West, according to that devise, *vidi Solem Orientem in Occidente*, onely because they have raied from some wilde, and unarmed people, Mines & store of gold; and on the other side, that this Island of *Britaine*, seated and named as it is, and that hath, I make no question, the best Iron in the World, that is, the best Souldiers of the world, shall thinke of nothing but accomps and audits, and *meum & tuum*, and I cannot tell what.

Mr. Speaker, I have (I take it) gone through the parts which I propounded to my selfe, wherein if any man shall think I have sung a *placebo*, for mine owne particular; I would have him know that I am not so unseene in the world, but that I discern, it were much alike for my private fortune a *tacebo*, as to sing a *placebo* in this businesse: But I have spoken out of the fountaine of my heart, *Credidi propter quod locutus sum*: I believed, therefore I spake, so as my duty is performed: the judgment is yours, God direct it for the best. A



A Speech used by Sir *Francis Bacon*

Knight, in the Lower House of Parlia-

ment: by occasion of a motion concerning the union of Lawes.

AND it please you, (Mr. Speaker) were it now a time to wish, as it is to advise, no man should be more forward, or more earnest than my selfe in this wish, that his Majesties Subjects of *England* and *Scotland* were governed by one Law: And that for many reasons.

First, because it will be an infallible assurance, that there will never be any relapse in succeeding ages to a separation.

Secondly, *Dulcis tractus pari iugo*. If the draught lye most upon us, and the yoke lie least on them, it is not equall.

Thirdly, the qualities, and (as I may terme it) the elements of their Lawes, and ours are such as doe promise an excellent temperature in the compounded bodie: for if the prerogative here be too indefinite, it may bee the libertie there is too unbounded: if our Lawes and proceedings be too prolix, and formall, it may bee theirs are too informall and summarie.

Fourthly, I doe discerne to my understanding, there will be no great difficultie in this worke: For their Lawes, by that I can learne, compared with

ours are like their language, compared with ours; for as their language hath the same roots that ours hath, but hath a little more mixture of Latin and French: so their Lawes and Customes have the like grounds that ours have, with a little more mixture of the Civill Law, and French Customes.

Lastly, the meane to this work, seemeth to me no lesse excellent, than the worke it selfe: for it both Lawes shall be united, it is of necessity for preparation and inducement thereunto, that our own Laws be renewed and recompiled, then the which I think there cannot be a work that his Majestie can undertake in these his times of peace more politike, more honourable, nor more beneficiall to his Subjects for all ages,

*Pace data in terris, animum ad civilia vertit
Jurasuum, legesque tulit Iustissimus author.*

For this continuall heaping up of Lawes without digesting them, maketh but a *Chaos* and confusion, and turneth the Lawes many times to become but snares for the people, as was well said, *Pluet super eos laqueos; non sunt autem peiores laquei, quàm laquei legum.* And therefore this work I esteem to be indeed a work (rightly to terme it) *Heroicall*; and that which if I might live to see, I would not desire to live after. So that for this good wish of union of Lawes, I doe consent to the full: And I thinke you may perceive by that which I have said, that I come not into the opinion of others, but that I was long agoe settled in it my selfe: Nevertheles as this is moved out of zeale, so I take it to be moved out of time, as commonly all zealous motions are, while men are so fast carryed on to the end, as they give no atten-

attention to the meane : for if it be time to talke of this now ; it is either because the businesse now in hand cannot proceed without it, or because in time and order this matter should be precedent ; or because we shall lose some advantage towards this effect, so much desired , if wee should goe on in the course we are about: But none of these three in my judgement are true, and therefore the motion (as I said) unseasonable.

For first , that there may not be a Naturalization without an union in Lawes, cannot bee maintained: Look into the example of the Church , and there you shall see the originall bonds to be one faith, one Baptisme, and not one policie, one custome. And so it is in the Civill estate: the maine bonds are, One allegiance, one birth-right, or naturality: And not one Law, or one administration of Law: And therefore one of the Fathers made an excellent observation upon the two mysteries ; the one that in the Gospel: The garment of Christ is said to have bin without seam: The other that in the Psalme, the Garment of the Queene is said to have beene of divers colours , whereupon he draweth this conclusion: *In veste varietas sit, scissura non sit* ; Allowing divers formes of Ecclesiasticall Lawes and usages, so as there bee no Schisme or separation. And so in this case (Mr. Speaker) wee are now in hand to make this Monarchie of one peece, and not of one colour. Looke againe into the example of forraine Countries, and take that next us of *France*, and there you shall find that they have this distribution, *Pais du droit-escrit* , and *pais du droit constumier*. For *Gascogne*, *Languedocke*, *Province*, *Dolphin*, are Countries.

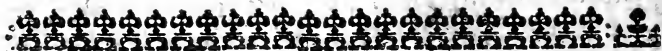
tries governed by the Letter, or Text of the Civil Law. But the Isle of *France*, *Touraine*, *Berie*, *Anion*, and the rest; and most of all *Britanie* and *Normandy* are governed by Customes, which amount to a municipall Law, and use the Civill Law, but onely for grounds, and to decide new and rare cases; and yet neverthelesse naturallization passeth through all.

Secondly, that this union of Lawes should precede the Naturallization, or that it should goe on *pari passu*, hand in hand, I suppose likewise can hardly be maintained: But the contrarie, that Naturallization ought to precede, and that not in the precedence of an instant; but in distance of time, of which my opinion, as I could yeeld many reasons; so because all this is but a digression, and therefore ought to be short: I will hold my selfe now onely to one, which is briefly and plainly this; that the union of Lawes will aske great time to bee perfected, both for the compiling, and for the passing; during all which time, if this marke of strangers should be denyed to be taken away, I feare it may induce such a habit of strangenes, as will rather be an impediment, than a preparation to further proceeding: for he was a wise man that said, *opportuni magnis conatibus transitus rerum*, and in these cases, *Non progredi, est regredi*: And like as in a pair of Tables, you must put out the former writing before you can put in new; and againe, that which you write in, you write letter by letter: but that which you put out, you put out at once. So we have now to deale with the Tables of mens hearts, wherein it is in vaine to thinke you can enter the
willing

willing acceptance of our Lawes and Customes, except you first put forth all notes either of hostilitie, or fortaine condition : and these are to bee put out *simul & semel*, at once without gradations ; whereas the other poynts are to be imprinted and ingraven distinctly and by degrees.

Thirdly, whereas it is conceived by some, that the communication of our benefits and priviledges, is a good hold, that we have over them, to draw them to submit themselves to our Lawes, it is an argument of some probability, but yet to be answered many wayes. For first, the intent is mistaken, which is not as I conceive it, to draw them wholly to a subjection to our Lawes, but to draw both nations to one uniformitie of Law. Againe, to think that there should bee a kinde of articulare and indentured Contract, that they should receive our Lawes to obtain our priviledges, is a matter in reason of Estate not to be expected, being that which scarcely a private man will acknowledge, if it come to that whereof *Seneca* speaketh : *Beneficium accipere est libertatem vendere*. No, but courses of Estate doe describe and delineate another way, which is to win them either by benefit, or by custome : for we see in all Creatures, that men doe feed them first, and reclaime them after. And so in the first institution of Kingdomes, Kings did first win people by many benefits and protections, before they prest any yoke. And for custome, which the Poet calls, *imponere morem* ; who doubts but that the seat of the Kingdom, and the example of the King resting here with us, that our Manners will quickly be there, to make

make all things ready for our Lawes. And finally
 the Naturalization which is now propounded is
 qualified with such restrictions as there will bee e-
 nough kept back to be used at all times, for an A-
 damant of drawing them further on, towards our
 desires. And therefore to conclude, I hold this
 motion of union of Lawes verie worthy;
 and arising from verie good
 minds, but yet not proper
 for this time.



FINIS.



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